

CAROL MARCELLIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CAROL S. MARCELLIN, Individually and as
Co-Administrator of the Estate of
Charles E. Hollowell, Deceased, and
JESSICA HOLLOWELL-McKAY, as Co-Administrator of
the Estate of Charles E. Hollowell, Deceased,

Plaintiffs,

-vs-

HP, INC., and
STAPLES, INC.,

Defendants.

Remote Examination Before
Trial of CAROL MARCELLIN, Plaintiff, taken pursuant to the
Federal Rules of Civil Procedure, at SUE ANN SIMONIN COURT
REPORTING, 421 Franklin Street, Buffalo, New York, taken on
July 7, 2023, commencing at 10:05 A.M., before ANGELA L.
MUTO, Notary Public.

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1 APPEARANCES:

2 FARACI LANGE, LLP,
3 By STEPHEN G. SCHWARZ, ESQ.,
4 1882 South Winton Road,
5 Suite 1,
6 Rochester, New York 14618,
7 Appearing for the Plaintiffs.

8 SMITH SOVIK KENDRICK & SUGNET, P.C.,
9 By JACLYN S. WANEMAKER, ESQ.,
10 6245 Sheridan Drive,
11 Suite 218,
12 Williamsville, New York 14221,
13 Appearing for Defendant HP, Inc.

14 PILLINGER MILLER TARALLO, LLP,
15 By MARIA T. MASTRIANO, ESQ.,
16 126 North Salina Street,
17 Suite 215,
18 Syracuse, New York 13202,
19 Appearing for Defendant Staples, Inc.

20 PRESENT: Jessica Lori Hollowell-McKay
21
22
23

(The following stipulations were entered
into by all parties.)

It is hereby stipulated by and between counsel
for the respective parties that the oath of the
Referee is waived, that signing, filing and
certification of the transcript are waived, and
that all objections, except as to the form of the
questions, are reserved until the time of trial.

1 (A two-page Narrative Report dated 2/21/2020
2 (HP00409 - HP00410) was received and marked as
3 Exhibit 1,

4 a Photograph (HP00470) was received and
5 marked as Exhibit 2,

6 a Photograph (HP00439) was received and
7 marked as Exhibit 3,

8 two Photographs (HP00440 - HP00441) were
9 received and marked as Exhibit 4,

10 six Photographs (HP00463 and HP00465 -
11 HP00469) were received and marked as Exhibit 5,

12 a Hand-drawn Diagram dated 1/24/2020
13 (HP00399) was received and marked as Exhibit 6,

14 three Photographs (HP00422 - HP00424) were
15 received and marked as Exhibit 7,

16 a Photograph (HP00477) was received and
17 marked as Exhibit 8,

18 Plaintiffs' Responses to Interrogatories was
19 received and marked as Exhibit 9,

20 Plaintiffs' Second Amended Answers to
21 Defendant HP's First Set of Interrogatories was
22 received and marked as Exhibit 10,

23 and an Olean Area Federal Credit Union

1 Account Statement was received and marked as
2 Exhibit 11, for identification.)
3
4

5 THE REPORTER: Do all parties involved agree to this
6 deposition being conducted by remote video and to
7 the witness being sworn in remotely?

8 MS. WANEMAKER: Yes.

9 MR. SCHWARZ: Yes.

10 MS. MASTRIANO: Yes.

11 CAROL MARCELLIN: Yes.
12

13 C A R O L M A R C E L L I N,
14 192 Bells Brook Road, Ceres, New York 14721,
15 after being duly called and sworn,
16 testified via videoconference as follows:
17

18 EXAMINATION BY MS. WANEMAKER:
19

20 Q. Ms. Marcellin, my name is Jackie Wanemaker and I
21 represent HP in this case. I'm going to be
22 asking you some questions today concerning the
23 incident that occurred back in January of 2020

1 and regarding the claims in this case.

2 If at any time you don't hear or understand
3 one of my questions, just let me know and I'll
4 repeat or rephrase it. Please be sure that all
5 your responses are verbal rather than shaking or
6 nodding your head or saying something like
7 uh-huhs or uh-uh, it lets the court reporter take
8 it down properly. And please be sure to wait
9 until I'm done with my question before beginning
10 your response so that we're not talking over each
11 other.

12 Finally, if at any time you need to take a
13 break, just let us know and we'll do that. You
14 just need to answer any pending question before
15 we start a break. Okay?

16 A. Okay.

17 Q. Ms. Marcellin, what is your full name?

18 A. Carol Sharon Marcellin.

19 Q. And what's your date of birth?

20 A. 7/19/1942.

21 Q. Have you ever been known by any other name?

22 A. No.

23 Q. Have you ever been married?

1 A. Yes.

2 Q. When were you married?

3 A. 1961. That was a very long time ago.

4 Q. When did the marriage end?

5 A. Twenty-seven years later.

6 Q. Okay. And how did the marriage end?

7 A. Divorce.

8 Q. What is your ex-husband's name?

9 A. Alfred Andrew Marcellin.

10 Q. What's your maiden name?

11 A. My maiden name was Bell, B-E-L-L.

12 Q. Any other marriages?

13 A. No.

14 Q. Do you have any children?

15 A. Yes. Two sons.

16 Q. What are their names and ages?

17 A. Well, the oldest is Alfred Marcellin Junior, and
18 the other is Edward Marcellin.

19 Q. How old is he?

20 A. The oldest is sixty, the other just turned
21 fifty-nine.

22 Q. And where do they live?

23 A. The oldest is on Promised Land Road in Weston

1 Mills, New York, and the youngest is in Olean,
2 New York on River Street.

3 Q. What does Alfred do for a living?

4 A. Works at Cutco Cutlery.

5 Q. Does he have any involvement with the local fire
6 department?

7 A. No.

8 Q. Do you have any grandchildren?

9 A. Pardon me?

10 Q. Do you have any grandchildren?

11 A. I have -- oh, yes. Five grandchildren, one
12 great-grandchild.

13 Q. Can you tell me about the grandchildren, their
14 names and ages?

15 A. Age would be hopeless.

16 Q. Generally.

17 A. Yes. I have a Jessica Marcellin. Now -- she's
18 married now, so her last name has changed.
19 Carnelli is her married name.

20 Q. So she's an adult?

21 A. Oh, yes. Fifty-ish.

22 Q. And how old are the other grandchildren?

23 A. How old are the other grandchildren?

1 Q. Yes.

2 A. Well, there's Chelsea Marcellin is about forty.
3 And I have another one that's in Idaho who is
4 thirty.

5 Q. And what about the last two?

6 A. Those would be on my -- my oldest son's side.
7 Ryan Marcellin of course. He is in the
8 neighborhood of twenty-seven to twenty-eight
9 years old, and Brett Marcellin would be two years
10 younger than that.

11 Q. And are Ryan and Brett Alfred's children?

12 A. What do you mean by Alfred's children?

13 MR. SCHWARZ: Alfred Junior's. Are they children
14 from your son Alfred?

15 THE WITNESS: Alfred Junior, sure. My grandchildren,
16 yes.

17 BY MS. WANEMAKER:

18 Q. And then the other three, Jessica, Chelsea, and
19 the grandchildren who lives in Idaho, are those
20 Edward's children?

21 A. Yes.

22 Q. And you said there's one great-grandchild?

23 A. Yes. Two years old.

1 Q. Who is that?

2 A. Her name is Brynleigh Carnelli.

3 Q. Are the grandchildren, other than the one who
4 lives in Idaho, are they local to New York State?

5 A. Well, the Brynleigh lives in Connecticut with her
6 parents, the other are local.

7 Q. Do you have any other grandchildren or
8 stepchildren?

9 A. No.

10 Q. When did you begin living at 192 Bells Brook?

11 A. I would say 1989.

12 Q. Did you own or rent?

13 A. Own.

14 Q. And did you continue to own that property up
15 until the date of this incident that we're here
16 about today?

17 A. Yes, I did.

18 Q. Can you give me a basic layout of the residence?
19 Like how many levels, bedrooms, bathrooms, that
20 sort of thing.

21 A. It was all one level. I had two bedrooms --
22 actually, three, but the third was being used as
23 my office and sewing room. Bath and a half, the

1 kitchen, living room of course.

2 Q. Was there an attached garage?

3 A. No.

4 Q. What was the yard like?

5 A. My yard is like one-third acres.

6 Q. Is it a lawn or is it wooded or a combination?

7 A. Well, I'm about three sides, past the lawn is
8 wooded on all three sides, and the front of
9 course, the front of the road with no, you know,
10 tree line there.

11 Q. And you mentioned that there were three bedrooms,
12 one of which you used for an office and a sewing
13 room?

14 A. Yes.

15 Q. Were the other two used as bedrooms?

16 A. One was only used occasionally as a bedroom, like
17 a guest bedroom.

18 Q. Did you and Charles share a bedroom back in
19 January of 2020?

20 A. Yes, we did.

21 Q. Back in the summer of 2019, how did you have the
22 yard maintained? For example, did you have a
23 service come to cut the lawn?

1 A. I was the lawnmower.

2 Q. And how did you handle snow removal?

3 A. Again, I used a side-by-side four-wheeler vehicle
4 with a plow in front. I was able to plow my
5 blacktop driveway. Occasionally, if we had a
6 real serious storm, I did have someone who would
7 come in and do that with a larger vehicle.

8 Q. In the ten years prior to the incident, were any
9 modifications made to your home?

10 A. No.

11 Q. Did you have any issues or problems with any of
12 the systems in your home during that time period?

13 A. No.

14 Q. Any work done to the electrical system in the ten
15 years before the incident?

16 A. No.

17 Q. Plumbing work done during that time?

18 A. What was that one?

19 Q. Plumbing?

20 A. Plumbing? I think the only thing we had done was
21 change the shower arrangement in the main
22 bathroom and had to install a new toilet.

23 Q. And what was changed with respect to the shower

1 arrangement?

2 A. Well, we had gone from his shower where you
3 climbed into the tub to use the shower and went
4 into a walk-in shower for Chuck's purposes.

5 Q. Approximately when was that done?

6 A. I would say 2017.

7 Q. What was the heating system, was it a gas
8 furnace, for example? What was it?

9 A. Yes, it was gas furnace.

10 Q. And when was that installed?

11 A. Matter of fact, it had been less than a year
12 since we put in a new gas furnace.

13 Q. So you got a new furnace within a year of the
14 incident occurring?

15 A. Yes.

16 Q. Can you narrow that down at all in terms of when
17 it was done? Was it in 2019?

18 A. It probably would have been actually late fall in
19 2018.

20 Q. And who did that?

21 A. Owl Homes.

22 Q. Can you repeat that, please?

23 A. Owl Homes. A person who had sold us the mobile

1 home.

2 Q. And was it a complete replacement of the furnace
3 at that time?

4 A. Yes.

5 Q. Did you have any gas leaks from the furnace?

6 A. No.

7 Q. Did you have any other heaters, such as a
8 portable heater, for example, in the home back in
9 January of 2020?

10 A. We had an electric fireplace in the living room.

11 Q. Anything else?

12 A. No.

13 Q. Did you regularly use the electric fireplace?

14 A. Very seldom.

15 Q. When did you last use it prior to the incident?

16 A. It had to have been in 2018. And I'm not able to
17 remember exactly when, but we had used it during
18 that winter of 2019.

19 Q. Did you have any propane in the house?

20 A. No.

21 Q. Did any of the electrical breakers regularly trip
22 or turn off?

23 A. No.

1 Q. Do you know which breaker was connected to your
2 office?

3 A. Not at this point, no.

4 Q. Other than getting the new furnace a year or so
5 before the incident, did you have any other work
6 done to the systems in your house in the ten
7 years before the incident?

8 A. No.

9 Q. Do you have any records or documentation relative
10 to the new furnace?

11 A. No. Unfortunately my documentation for anything
12 was in the room with the fire.

13 Q. Back in January of 2020, who resided at your
14 home?

15 A. Charles and myself.

16 Q. Did either of you use candles?

17 A. Actually, we had in the past on occasion, but
18 they had all been stored in a drawer in the back
19 bedroom.

20 Q. And why --

21 A. Fire inspectors had found them and noticed that
22 they hadn't been used.

23 MS. WANEMAKER: I'm going to try to show you a

1 photograph by using my screen.

2 Steve, this is one of the photos that was
3 produced with HP's document production. I've had
4 it marked as Exhibit 3, it's HP00439. So please
5 bear with me as I try to share my screen here.

6 MR. SCHWARZ: You're good.

7 BY MS. WANEMAKER:

8 Q. Okay. This is a one-page exhibit, Exhibit 3, and
9 it's a photograph -- actually, Ms. Marcellin, can
10 you tell me what is depicted in this photograph?

11 A. This appears to be my computer room, sewing room.

12 Q. And I'm going to show you with my mouse. I don't
13 know if you can see this movement right here.

14 I'm circling with the mouse on the wall. Is that
15 kind of a sconce or a candleholder attached to
16 the wall there?

17 A. I truly don't remember that being there.

18 Q. Did you ever use that for candles?

19 A. No.

20 Q. I'm going to stop the share and go back to the
21 regular screen.

22 Taking you back to the five years or so
23 before the incident, did anybody besides yourself

1 and Charles reside at your home?

2 A. No.

3 Q. Where did you live before you lived at Bells
4 Brook?

5 A. On Michigan Avenue in the Town of Olean on Route
6 16.

7 Q. How long were you there?

8 A. Twenty-seven years.

9 Q. Is that where you lived during the time you were
10 married?

11 A. Yes.

12 Q. Where did you grow up?

13 A. In Hinsdale, New York.

14 Q. Have you ever resided outside of New York State?

15 A. No.

16 Q. What is your highest level of education?

17 A. One year of community college beyond high school.

18 Q. Where did you go to high school?

19 A. Hinsdale Central School.

20 Q. And when did you graduate?

21 A. 1960.

22 Q. And what community college did you attend?

23 A. Pardon me?

1 Q. What college did you attend?

2 A. JCC.

3 Q. Is that Jamestown?

4 A. Jamestown Community, yeah.

5 Q. Thank you. Did you go there right after high
6 school?

7 A. Yes.

8 Q. What type of courses were you taking?

9 A. Actually, I had majored in business in high
10 school and went on to look into medical office
11 type work.

12 Q. And you completed one year?

13 A. Yes.

14 Q. Any other additional education after that?

15 A. No.

16 Q. Any trade schools?

17 A. No.

18 Q. Were you ever in the military?

19 A. No.

20 Q. Are you currently employed?

21 A. No, I'm retired.

22 Q. When did you last work?

23 A. 2001.

1 Q. And where did you work?

2 A. America Olean Tile.

3 Q. What did you --

4 A. Daltilo it became shortly before I left there.

5 Q. What did you do there?

6 A. I actually did factory work, assembly.

7 Q. How long were you there?

8 A. Twenty years.

9 Q. Was it full-time?

10 A. Yes.

11 Q. When you retired, was it from that company?

12 A. Yes.

13 Q. Did you have any other significant employment
14 prior to your twenty years at America Olean Tile?

15 A. Well, I did fourteen years of retail work, some
16 industrial sewing for the government. The list
17 can go on and on. Those would be the major
18 things I did, and in between my kids were growing
19 up.

20 Q. Where did you do the retail work?

21 A. Wonderful Hills, Walmart, Grants. There was
22 another that unfortunately I can't recall --
23 Western Shoppers City, that was my first

1 experience with retail. That's really aging me.

2 Q. Have you worked in any capacity since you retired
3 in 2001?

4 A. No.

5 Q. Did you do any volunteer work?

6 A. No.

7 Q. Did Charles do any volunteer work say in the five
8 years prior to his passing?

9 A. No.

10 Q. Did you have a driver's license back in January
11 of 2020?

12 A. Yes.

13 Q. Did it require that you wear corrective lenses,
14 eyeglasses or contacts?

15 A. Yes, by that time.

16 Q. In January of 2020, did you wear eyeglasses or
17 contact lenses?

18 A. Yes, mostly contact lenses.

19 Q. Is that for seeing close up or far away or both?

20 A. Both.

21 Q. Do you smoke?

22 A. No.

23 Q. Were you ever a smoker?

1 A. No.

2 Q. Did Charles smoke?

3 A. Not at that time. He had quit.

4 THE WITNESS: What year did you quit smoking?

5 JESSICA LORI HOLLOWELL-McKAY: 2004.

6 THE WITNESS: They had a competition, the daughter
7 and father, of quitting the smoking thing, and
8 they both succeeded at about the same period of
9 time, 2004, 2005.

10 BY MS. WANEMAKER:

11 Q. Did he smoke cigarettes, cigars, both, something
12 else?

13 A. Cigarettes.

14 Q. How much did he smoke during the time he did?

15 A. Not quite a pack a day.

16 Q. Do you know when he started?

17 A. No, I wouldn't be familiar with that.

18 Q. What type of cigarettes did he smoke?

19 A. I don't remember his brand. I'm sorry.

20 Q. Do you remember if it was menthol or non-menthol?

21 A. Non-menthol.

22 Q. Did he use any sort of an electronic nicotine
23 device like vaping?

1 A. No.

2 Q. Have you taken any medication in the last
3 twenty-four hours that could affect your memory
4 or ability to testify today?

5 A. No.

6 Q. Did you ever take any notes regarding the
7 incident?

8 A. Maybe over a period of time I jotted some notes.

9 Q. Do you still have those?

10 A. No.

11 Q. And what did the notes say?

12 A. I really can't remember. I don't have them.
13 It's been too long.

14 Q. Was it something that you did on a piece of paper
15 or was it on a computer or some other electronic
16 means?

17 A. Oh, they're usually written notes. And once no
18 longer needed, they were disposed of.

19 Q. Did you review anything to prepare for your
20 deposition today?

21 A. Only going over procedure yesterday with my
22 attorney.

23 Q. Did you look at any documents or photos?

1 A. No.

2 Q. Have you ever reviewed any photos relative to the
3 incident?

4 A. Not sure how to answer that. A lot of our
5 meetings were we -- I was shown the remains of
6 the destruction of the laptop in question.

7 Q. Have you ever reviewed any report concerning the
8 fire? An investigative report, for example?

9 A. Not that I remember.

10 Q. Have you ever been convicted of a crime, meaning
11 a felony or misdemeanor?

12 A. No.

13 Q. Was Charles ever convicted of a crime, to your
14 knowledge?

15 A. No.

16 Q. Have you ever filed for bankruptcy?

17 A. Yes, I did, actually.

18 Q. When?

19 A. I would say -- well, it was before I knew Chuck,
20 so had to be more than thirty years ago. I
21 really don't have a lot of memory of that.

22 Q. And that's okay, but I'm assuming that's been
23 taken care of, closed?

1 A. Long time ago.

2 Q. Do you know if Charles ever filed for bankruptcy?

3 A. Not to my knowledge, no.

4 Q. Have you ever been a party to a lawsuit before,
5 meaning have you ever sued anybody or been sued
6 by anybody other than this case?

7 A. No.

8 Q. Have you ever given testimony before?

9 A. Been on a jury a lot, but never given testimony.

10 Q. Do you know if Charles ever gave testimony?

11 A. Not to my knowledge.

12 Q. Was he ever a party to a lawsuit?

13 A. Not to my knowledge.

14 Q. Did he have a Workers' Compensation claim
15 relative to a work injury that occurred in
16 approximately 2000 at the post office?

17 A. Yes, he did.

18 Q. Do you know if he gave any testimony relative to
19 that injury?

20 A. No.

21 Q. Did he receive any sort of settlements with
22 respect to that injury?

23 A. No.

1 Q. I know that you've been referring to him as
2 Chuck. Would you like me to do that going
3 forward?

4 A. No. That's okay.

5 Q. What was his date of birth?

6 A. Pardon me?

7 Q. Chuck's date of birth.

8 A. I'm not getting that last word.

9 MR. SCHWARZ: Date of birth.

10 THE WITNESS: Well, his birthday was July 21, 1943.

11 BY MS. WANEMAKER:

12 Q. How tall was he?

13 A. I would say six foot.

14 Q. And how much did he weigh back in January of
15 2020?

16 A. I'd say two fourteen.

17 Q. What was his educational background?

18 A. High school grad.

19 Q. Where did he go to high school?

20 A. Olean High School.

21 Q. Do you what year he graduated?

22 A. No, I really don't.

23 Q. Did he ever go to any college or trade schools?

1 A. Not to my knowledge.

2 Q. Was he a member of any union?

3 A. I'm not sure if the post office has a union or
4 not.

5 Q. Where was he from originally, where did he grow
6 up?

7 A. Pardon me?

8 Q. Where did he grow up?

9 A. In Olean, New York.

10 Q. How did you meet?

11 A. At the post office, believe it or not.

12 Q. Was he working at the time?

13 A. Yes.

14 Q. When was that, when did you guys meet?

15 A. Trying to put a year on that. Let's say -- I do
16 not remember.

17 Q. Which post office did he work at?

18 A. At the post office in Olean, New York. The
19 postal unit on North Union Street.

20 Q. And at some point did he move into your house on
21 Bells Brook?

22 A. Yes.

23 Q. When did he move in?

1 A. That would be difficult.

2 MR. SCHWARZ: Just do the best you can.

3 THE WITNESS: I think I need a break. I'm getting --

4 MS. WANEMAKER: That's okay.

5 (Whereupon, a short recess was then taken.)

6 THE WITNESS: For the last question there, when Chuck
7 moved into Bells Brook, it was him and I together
8 at the same point in time in 1989.

9 BY MS. WANEMAKER:

10 Q. Thank you for clarifying that. Where did he live
11 before that?

12 A. Well, he was living between a place on North 1st
13 Street in Olean and his camp in the Town of
14 Carlton.

15 Q. And when you say he lived between, do you mean
16 that he spent time at both of those places?

17 A. Yes.

18 Q. Was the residence on North 1st Street an
19 apartment or a house that he owned or rented?

20 A. An apartment.

21 Q. And did he own the camp in Carlton?

22 A. Yes.

23 Q. What did the camp consist of?

1 A. A camp.

2 Q. For example, was there a cabin?

3 A. A storage building, you know.

4 Q. Do you know how many acres he had there?

5 A. I would put it at probably half an acre, three
6 quarters of an acre of property. I don't know.
7 Woods.

8 Q. Other than the storage building, were there any
9 other structures on that property?

10 A. The camp itself, a cabin.

11 Q. A cabin?

12 A. Just the building -- the camp where he slept,
13 cooked, did whatever, you know. And a small
14 storage building.

15 Q. I had a hard time hearing you. So there was a
16 cabin in addition to some storage building?

17 A. Yes.

18 Q. Did he continue to own that property up until
19 January of 2020?

20 A. No. That was sold approximately a year or two,
21 at the most, after he moved to Bells Brook.

22 Q. So early '90s?

23 A. Yes.

1 Q. And I apologize. Did you say yes or no?

2 A. Yes.

3 Q. And then you said that when you moved into Bells
4 Brook, you did that together with Chuck, correct?

5 A. (No response.)

6 Q. Did Chuck have any ownership in that property?

7 A. No. Actually, that was in my name, the property
8 was.

9 Q. And did that remain the case up until January
10 2020?

11 A. Yes.

12 Q. Did he continue to reside at Bells Brook up until
13 January of 2020 from the time he moved in?

14 A. Yes.

15 Q. And I understand he was in the military?

16 A. Yes. In Vietnam.

17 Q. Other than his time in the military, did he ever
18 reside outside of New York, to your knowledge?

19 A. I don't know if he -- in Florida when we went
20 down there, him and David went to do work, but I
21 don't know -- they didn't buy property, so no,
22 probably not. I don't think he was considered a
23 resident, just working out of state.

1 Q. Approximately when did he work in Florida?

2 A. I have to check with the daughter to see if she
3 remembers because I do not. It's before my time.

4 Q. And what branch of the service was he in?

5 A. Army.

6 Q. What years?

7 A. He was in for two years. And I want to say he
8 got out in '62, but I'm not positive if it's '62.

9 Q. And I apologize if I asked you this already, but
10 when did you meet him? I'm trying to figure out
11 did you know him at that time.

12 A. No. I didn't know him at the time he was in
13 military.

14 Q. And you said Vietnam. Did he serve tours in
15 Vietnam?

16 A. Yeah, he did tours.

17 Q. What was his rank?

18 A. Do not know that.

19 Q. What type of discharge did he get from the Army?

20 A. Honorable.

21 Q. After he was discharged, did he have any further
22 military service?

23 A. Not to my knowledge.

1 Q. Do you know what type of work he did while he was
2 in the service?

3 A. He was a tail gunner in a helicopter. I can't
4 remember what they called him. The huge ones.

5 Q. Do you know if he saw any combat?

6 A. He saw combat? Well, only from the air, being a
7 tail gunner.

8 Q. Did he sustain any injuries during the time he
9 served?

10 A. Yes.

11 Q. And what were they?

12 A. The ankle. He was shot in the ankle from a
13 sniper below.

14 Q. Did he have any surgery relative to that?

15 A. Of course that happened before my time. But yes,
16 they did have to do some surgical work on it.

17 Q. Do you know what ankle it was?

18 THE WITNESS: Here we go again, Jess. What one was
19 it?

20 MR. SCHWARZ: Just say if you could.

21 THE WITNESS: I can't remember.

22 BY MS. WANEMAKER:

23 Q. Any other injuries in the service, to your

1 knowledge?

2 A. Not in the military, not that I know of.

3 Q. And when you met him, you said he was working at
4 the post office?

5 A. Yes.

6 Q. What was he doing there?

7 A. He was a window clerk at the time.

8 Q. Was it part-time, full-time?

9 A. Full-time.

10 Q. And how long did he work there?

11 A. He was there before I met him, so I don't
12 remember.

13 Q. I know we talked a little bit about an injury he
14 sustained while in the post office. Were you
15 with him at the time that occurred? Not
16 physically with him at work, but together with
17 him?

18 A. Yes.

19 Q. And what is your understanding of how that
20 incident occurred?

21 A. Chuck was going in at four in the morning to load
22 the loading dock to help unload the truck that
23 comes in from Buffalo in the Olean unit, and it

1 snowed, ice very bad on the dock that morning.
2 And then they had to pull hampers from the truck.
3 He slipped pulling -- as he walked backwards to
4 the building, fell back against a metal pipe that
5 kept him from falling off the loading dock, but
6 hit his back on that pipe and went down and
7 fractured his back.

8 Q. Did he return to work following that incident?

9 A. No. Actually, he did not.

10 Q. Do you know if he went to work for the post
11 office after he was discharged from the Army?

12 A. No. I think he worked for Clark Brothers,
13 Dresser Industries for a while before he went to
14 the post office.

15 Q. What type of work did he do there?

16 A. They worked on building turbines, I know that. I
17 don't know too much about their production.

18 Q. After the work injury at the post office, was he
19 -- did he apply for Social Security Disability
20 benefits, Workers' Compensation, something else?

21 A. He went on Social Security.

22 Q. Do you know when that started?

23 A. I really don't remember for sure.

1 Q. Do you know what condition or conditions he
2 received the Social Security Disability for?

3 A. No. Basically, the back injury that resulted in
4 his inability to work that job anymore or any
5 job, basically.

6 Q. And did he receive a monthly income from Social
7 Security?

8 A. Yes.

9 Q. Do you recall how much that was back in January
10 2020?

11 A. No, I do not.

12 Q. Did it continue up until that time?

13 A. Up until what time?

14 Q. Up until he passed.

15 A. Yes.

16 Q. Did he receive any type of payment from the
17 Workers' Compensation with respect to that
18 injury?

19 A. Yes, he did.

20 Q. And did that continue up until the time that he
21 passed?

22 A. Yes.

23 Q. How much was that per month?

1 A. I do not remember the amount.

2 Q. Was there any kind of survivor rate with the
3 Workers' Comp or Social Security? In other
4 words, was any money received by yourself or
5 anyone else after he passed from those entities?

6 A. I do not believe so.

7 Q. Did he receive any veterans' compensation?

8 A. No. He received some medical care through them,
9 but I believe there was funding.

10 Q. Did he treat at the VA?

11 A. Yes.

12 Q. Was there a pension from the post office job?

13 A. I'm not positive about that.

14 Q. Was Chuck ever married?

15 A. Yes.

16 Q. Who was he married to?

17 A. I can't remember her first name. Beatty was her
18 last name.

19 Q. Can you spell that? Did you say Beatty?

20 A. B-E-A-T-T-Y I believe.

21 Q. How did that marriage end?

22 A. Divorce.

23 Q. Do you know the approximate years of the

1 marriage?

2 A. No.

3 MR. SCHWARZ: I think Jessica can answer all those
4 questions better.

5 BY MS. WANEMAKER:

6 Q. Do you know if there are any stepchildren from
7 the marriage?

8 A. Not to my knowledge.

9 Q. And I understand there are two daughters, Jessica
10 and Josie, from that marriage; is that correct?

11 A. Yes.

12 Q. Were you and Charles ever married?

13 A. No.

14 Q. Why not?

15 A. We had both been through a very not pleasant
16 marriage, opted to not give up our Social
17 Security after working all of our lives, which
18 one of us would have been taking a greater cut in
19 our older years, and didn't see a need for it.

20 Q. Does Charles have any other children besides
21 Josie and Jessica or any grandchildren?

22 A. That would be another question for Jess and
23 Josie.

1 Q. How many brothers and sisters did Chuck have?

2 A. I'm trying to think of names for all of these. I
3 believe Alice and June. Three sisters.

4 MR. SCHWARZ: These are all questions that Jessica is
5 going to have a much easier time answering. Do
6 you mind if we kind of try to do that so that we
7 don't put as much stress on Carol to come up with
8 stuff that she really doesn't know?

9 MS. WANEMAKER: Sure. No problem. We can move on.

10 MR. SCHWARZ: Thank you.

11 BY MS. WANEMAKER:

12 Q. Was there any life insurance when Chuck passed?

13 A. Yes, through the post office.

14 Q. Who was the beneficiary?

15 A. That ended up being distributed to his daughters
16 and to a son of his previous wife.

17 Q. Did he have a will?

18 A. Yes.

19 Q. Did the will name any beneficiary?

20 A. Yes. The two daughters and myself.

21 Q. Was there anything in the will, like property or
22 assets, that you received?

23 A. No property. Just monies that would have been

1 used for final expenses and things.

2 Q. Do you know if the will was placed into probate?

3 A. What was that?

4 Q. Do you know if the will was placed into probate?

5 A. At the time of this, courts were closed. I ended
6 up going through the county and the clerk's
7 office to distribute and do the processing.

8 Q. Were you the executrix?

9 A. Yes.

10 Q. Did he have any IRA accounts?

11 A. Yes.

12 Q. Can you tell me about them?

13 A. He just had the one, one account.

14 Q. Who was the beneficiary?

15 A. That, again, I believe went to the daughters.

16 Q. Did he have any credit card or other debt when he
17 passed?

18 A. No debt. He did have a credit card to his name,
19 but I don't remember which one that was. I don't
20 remember.

21 Q. Did he have any outstanding loans for property or
22 anything else?

23 A. No.

1 Q. Did he have any sources of income, like from
2 rental properties or anything else?

3 A. No.

4 Q. I understand that you had a joint bank account
5 with him at Community Bank; is that correct?

6 A. Yes.

7 Q. Did his checks get directly deposited into that
8 account?

9 A. Yes.

10 Q. And that was the Social Security?

11 A. Yes.

12 Q. Anything else?

13 A. I really cannot remember.

14 Q. Was any of his money from that account used for
15 expenses at Bells Brook?

16 A. Oh, yes. We shared our debts and our utilities,
17 you know, maintenance stuff.

18 Q. In the five years before he passed, did Chuck
19 have any medical conditions that he had treatment
20 for?

21 A. The only thing I can recall is falling -- bumping
22 a knee, which resulted in an abscess at the back
23 of the knee, which they had to drain. Other than

1 that, it was just routine visits and medical
2 care.

3 Q. When did the knee injury occur?

4 A. I would say between five and seven years before
5 his death.

6 Q. Did he have high blood pressure?

7 A. Yes, managed.

8 Q. Did he have a particular doctor or treatment
9 provider for that condition?

10 A. No. He went to the Universal Primary Care on
11 North Union Street in Olean and went through
12 multiple physicians there because we ended up
13 with doctors who were in their residency,
14 staying or leaving to go somewhere else. They
15 had two excellent doctors there at one point.

16 Q. Did he take any medication for that?

17 A. The blood pressure, yes.

18 Q. Do you know what he took?

19 A. No. I do not know the name of the script.

20 Q. Did he have heart disease, coronary artery
21 disease, hypertension, anything like that?

22 A. No. Nothing that would require medical care, no.

23 Q. Did he take aspirin or fish oil or any

1 supplements?

2 A. He had a daily multivitamin, yes. I think the
3 doctor did at one point put him on a daily
4 aspirin, just a low-dose aspirin.

5 Q. Was he on the aspirin in January of 2020?

6 A. Yes.

7 Q. Did he ever have a stroke?

8 A. No.

9 Q. Do you know which doctor recommended the aspirin?

10 A. I would say Dr. Ferrell, but I'm really not
11 positive, would have been one from Universal
12 Primary Care.

13 Q. Did he have diabetes?

14 A. No.

15 Q. Did he ever have cancer?

16 A. No.

17 Q. Was he suffering from some kind of dementia in
18 the years leading up to the incident?

19 A. Yes. Maybe for the last three or four years.

20 Q. When was it diagnosed?

21 A. I would say in the neighborhood of 2016, 2017.

22 Q. What led up to the diagnosis?

23 A. Becoming forgetful.

1 Q. Did you observe any other symptoms back at that
2 time?

3 A. A little bit of an attitude change maybe, nothing
4 major.

5 Q. Did he have a specific medical provider for
6 dementia?

7 A. I think that that would have been through the VA
8 actually that they have.

9 Q. Did he ever treat with a Dr. Hourihane at Dent?

10 MR. SCHWARZ: That's up in Buffalo.

11 THE WITNESS: Yeah. I've been there, but I don't
12 remember taking Chuck there, though. At Dent
13 Neurology, right? No, I don't remember that.

14 BY MS. WANEMAKER:

15 Q. Did he have any testing done, such as lab work or
16 CT scans, relative to dementia?

17 A. He had had a CT scan, but I'm not certain when in
18 Buffalo that was done.

19 Q. Do you know where he had the CT scan?

20 A. It was in Buffalo, but I don't remember which
21 hospital or site. Sometimes they're off-site.

22 Q. Did he take any medication for dementia?

23 A. No.

1 Q. After he was diagnosed with dementia, did it
2 progress?

3 A. Oh, yes. Oh, yes.

4 Q. And what did you observe with respect to that?

5 A. Little behavioral changes came first I believe.
6 Less interest in things that he had been more
7 involved in.

8 Q. Did he have any confusion?

9 A. Not at the beginning, no.

10 Q. Did he have any difficulty with short-term
11 memory?

12 A. Somewhat.

13 Q. Any trouble with long-term memory?

14 A. I think that was actually his best point, that he
15 remembered things from a very long time ago.

16 Q. Did he ever have difficulty finding words?

17 A. Yes, occasionally.

18 Q. What about anxiety, depression?

19 A. I didn't notice much of a depression issue with
20 him at all even right up to the end.

21 Q. Do you know if he was diagnosed with depression?

22 A. No, never, to my knowledge.

23 Q. Was his judgment affected by the dementia, from

1 what you observed?

2 A. Yes.

3 Q. Did he ever fail to recognize you?

4 A. Not until probably maybe the last nine months of
5 his life I would say. Occasionally he would call
6 me by the wrong name.

7 Q. Was it worse at certain times of the day?

8 A. Oh, definitely. They told him he had
9 sundowner's, which meant I had to get him headed
10 towards his bed at an earlier hour at different
11 times of the year, depending on whether it was
12 winter or summer of course. Because it seems in
13 sundowner's you have a real problem in the dark
14 when the sun goes down, and shadows, things like
15 that.

16 Q. Did you attend medical appointments with him?

17 A. Oh, definitely.

18 Q. Did you have any discussions with his doctors
19 about his dementia?

20 A. Yes.

21 Q. When you spoke with his doctors, whether it was
22 about dementia or anything else, were you honest
23 with those doctors?

1 A. Yes.

2 Q. You accurately reported your observations?

3 A. Yes.

4 Q. At some point in 2019, did you request that he
5 have an evaluation at the VA for his financial
6 decision-making ability?

7 A. Yes. They were -- they wanted him to determine
8 his -- his degree of dementia.

9 Q. And was --

10 A. Whether he could make decisions.

11 Q. Did they do that evaluation?

12 A. Yes, they did.

13 Q. What was the result?

14 A. They didn't go into detail with me about it other
15 than the fact that he would need constant
16 supervision.

17 Q. Did you handle his finances towards the end?

18 A. Yes. He and I discussed any expense that we had.
19 He just wasn't able to handle his checkbook and
20 things like that. That's why we had a joint
21 account, for one. The postal people insisted on
22 having that set up so they could keep track of
23 what money was going out of there.

1 Q. Were you his power of attorney?

2 A. Yes, I was.

3 Q. When did that start?

4 A. I think we set that up two to three years up
5 ahead of the point in time he passed.

6 Q. Was he able to do basic math and count money
7 towards the end?

8 A. No. No.

9 Q. Was he able to use a telephone without
10 assistance?

11 A. No.

12 Q. Was he able to manage his medications, or was
13 that something that you helped him with?

14 A. Yeah, that was managed.

15 Q. By yourself?

16 A. Yeah.

17 Q. How many medications did he take back in January
18 of 2020?

19 A. Other than the daily aspirin, I would say it was
20 one medication a day. He was very against pill
21 pushing.

22 Q. What was the medication that he did take, or if
23 you don't remember --

1 A. Just for his blood pressure I believe.

2 Q. Did he take anything for the pain?

3 A. Anything he had for pain was quite a few years
4 before that. When he first hurt his back, they
5 had put him on some of the medication which they
6 have been since restricting because it could be
7 addictive. And he never took the medicine they
8 prescribed. He would take one a day, where they
9 wanted him to take three.

10 Q. So he was not taking the pain medication back in
11 January of 2020; is that correct?

12 A. No. No. That would have been taken away long
13 before that.

14 Q. What pharmacy did he use?

15 A. I believe Dan Horn Pharmacy was probably his
16 pharmacy at that time for several years.

17 Q. Did he also get medications through the VA?

18 A. I don't believe so. He -- I can't think of
19 anything. They provided medical supplies, but
20 nothing in the way of medication being taken
21 orally.

22 Q. Was he aware of what medications he was on and
23 why?

1 A. Yes, I believe he was.

2 Q. Did he ever take a medication for depression like
3 Lexapro or Prozac?

4 A. No.

5 Q. Did he have back surgery following the work
6 injury?

7 A. No.

8 Q. Did he ever have neck surgery?

9 A. Yes.

10 Q. When was that?

11 A. That was done in Buffalo. Maybe that was the
12 doctor that was referred to earlier. They did a
13 surgery at the back of his neck near the top of
14 his spine hoping it would assist him with his
15 mobility.

16 Q. Did it help --

17 A. It's strange that your walking ability comes from
18 your upper back rather than your lower. I was
19 unaware of that.

20 Q. Did the surgery help?

21 A. No. Unfortunately, it did not.

22 Q. Did he have other treatment with respect to the
23 back injury? I know you said he did not have

1 back surgery, but did he see a chiropractor, pain
2 management provider, physical therapist?

3 A. He had gone to Jones Memorial Hospital in
4 Wellsville for some -- not sure what they call
5 it, but it was an injected type of procedure in
6 the back that would give temporary relief,
7 limited time. Did that I think twice.

8 Q. Approximately when was that?

9 A. Pardon me?

10 Q. When?

11 A. That would have been probably about four years
12 before his death.

13 Q. And when did he have the neck surgery?

14 A. I believe that was prior, closer to seven or
15 eight years before.

16 Q. Did he see any other providers relative to the
17 back?

18 A. Not that I recall.

19 Q. Did he have residual or ongoing problems with his
20 back until he passed?

21 A. Ongoing from what period of time?

22 Q. Well, did he complain of any pain in the months
23 before he passed in his back?

1 A. I'm not understanding your question.

2 Q. I'm sorry. I'll try and clarify it. I'm just
3 trying to understand what his back condition was
4 in the last few months. If he had any ongoing
5 problems with it, what symptoms you observed.

6 A. Last few months, just the last few months of his
7 life? Is that what you're asking?

8 Q. Yes.

9 A. I would say not so much his back as his legs.

10 Q. And what were the conditions of his legs?

11 A. They were becoming weaker and less able to
12 support it over the last three years.

13 Q. Did he have any surgeries to either leg?

14 A. Any surgeries?

15 Q. You mentioned the right ankle, but I know that
16 was a long time before.

17 A. Not during his time with me, but maybe Jessica
18 would recall from sometime in the past.

19 MR. SCHWARZ: They can ask Jessica.

20 THE WITNESS: Yes.

21 BY MS. WANEMAKER:

22 Q. Did he have any treatment for the leg condition
23 that you just mentioned, the weakness?

1 A. For the what condition?

2 Q. Legs.

3 A. The leg condition? No. That was pretty much the
4 cause I guess by the injury to the spine, that --
5 the post office actually denied him care
6 immediately after that accident which caused his
7 fracture in his back causing that spine to heal
8 inappropriately -- improperly, wrong positioning.
9 And that led down the road to further
10 difficulties with using and the function of his
11 legs, which of course advanced over time.

12 Q. Was he using a wheelchair most of the time?

13 A. During his last two and a half to three years.

14 Q. You mentioned an abscess I think you said on his
15 knee from --

16 A. Yeah. Baker cyst. I couldn't think of that.
17 Thank you.

18 Q. When did that happen approximately?

19 A. That was at least seven or eight years before his
20 death.

21 Q. Did he have any treatment for that?

22 A. Yes.

23 Q. What --

1 A. Pain which we didn't understand because there was
2 no bruising there that we could see as weeks went
3 by. And the doctor checked it out and
4 immediately told him that he had an abscess in
5 the back behind his knee due to the injury, the
6 fall. So they drained that, put him on
7 medication temporarily, antibiotics.

8 Q. Where did they drain that? What provider did
9 that?

10 A. That would have been someone from Universal
11 Primary Care.

12 Q. And the fall that caused that injury, where did
13 that occur?

14 A. That would have probably have been in our
15 driveway or something like that at home.

16 Q. Did he have any surgeries to his feet?

17 A. Oh, he did.

18 Q. A bunionectomy?

19 A. Yes. He had a problem with some of his toes that
20 lapped over that caused him pain in his feet when
21 walking. That was pretty much a failure too,
22 because it ended up a staph infection.

23 Q. How many surgeries did he have on the feet?

1 A. Just one.

2 Q. Was he hospitalized at all relative to either
3 that surgery or the staph infection?

4 A. No.

5 Q. And approximately when was that?

6 A. I would be guessing, but seven to ten years
7 before his death.

8 Q. Did Chuck also suffer from a left shoulder or arm
9 injury?

10 A. Yes, he did.

11 Q. Did he have surgery for that?

12 A. Yes, which was a failure also. They had used
13 undersized -- an undersized replacement for the
14 socket and material that went into that shoulder.

15 Q. Did they do a revision surgery?

16 A. Pardon?

17 Q. Did they do a second surgery to try to correct
18 it?

19 A. No, because he had been through several sessions
20 that involved anesthesia. And his doctor at the
21 time recommended that because what was going on
22 with him, we avoid another surgical procedure
23 which could keep him under anesthesia for a long

1 period of time because it does affect the mind,
2 in seniors especially.

3 Q. When you said because of what was going on with
4 him, did you mean the dementia?

5 A. Yes.

6 Q. Did he sustain a fracture to that arm at some
7 point?

8 A. Yes, he did.

9 Q. How had that happened?

10 A. He had fallen in the hallway of our home. He had
11 gotten up in the night to use the restroom and
12 apparently, I don't know for what reason, he just
13 lost his balance or had something else going on,
14 dizzy, whatever. And the darkness at the time
15 and he wouldn't turn on a light of course, why
16 wake me, I think he -- because of the sundowner's
17 and the darkness, lost his balance, went down. I
18 believe it was the rotator cuff that was
19 destroyed that they were unable to properly
20 correct.

21 Q. When that happened, when that fall occurred, was
22 he able to get back up on his own?

23 A. No. I did have to call an ambulance for him that

1 night.

2 Q. Did he have other falls at home in the couple
3 years prior to the incident?

4 A. Prior to that same incident with the arm?

5 Q. Actually, I meant prior to the fire.

6 A. Oh, prior to the fire. Oh, yes. That was one of
7 his major problems that if he tried to -- towards
8 the end, those last couple of years, to get up
9 and walk, he would go down. I had to call the
10 ambulance a couple of times for him. He fell
11 once in the bathroom, once in the living room,
12 but there were no injuries involved. Just the
13 matter of -- someone my size trying to pick up an
14 over two hundred pound man.

15 Q. During any of those times when he fell, was he
16 able to get up either on his own or with your
17 assistance?

18 A. With my assistance. There had been times when he
19 would -- I would be able to get him up after we
20 practiced a few different ways of getting him to
21 something where he could help somewhat. But
22 mostly in those last two or three years, it was a
23 wheelchair, from his lift chair or the couch to

1 the wheelchair for his mobility.

2 Q. Was there also an injury that he sustained when
3 he was trying to fix the lawnmower?

4 A. Fix the lawnmower?

5 Q. Or the lawnmower tipped on him or something to
6 that effect.

7 A. Oh, yes. Unfortunately, that was his last
8 attempt at mowing the lawn. He had taken it onto
9 an area where it was too steep a grade and went
10 at it at a wrong angle. And yes, it did tip
11 over.

12 Q. Did he sustain any injury in that incident?

13 A. Just a cut that needed some sutures.

14 Q. In addition to what we've already discussed, did
15 he have any other medical problems?

16 A. No. I think we pretty well covered everything.

17 Q. Did he wear hearing aids?

18 A. Yes, he did.

19 Q. When did that start?

20 A. I'd say he wore them for approximately fifteen
21 years.

22 Q. In both ears or just one?

23 A. Both.

1 Q. Was it for hearing loss, tinnitus, both, or
2 something else?

3 A. It was hearing loss.

4 Q. Did he have any kidney or incontinence problems?

5 A. No kidney problems. And incontinence problems, I
6 would say no. His biggest problem was needing to
7 wear a brace due to his inability to ambulate in
8 a reasonable period of time to the restroom.

9 Q. Did he wear dentures?

10 A. Yes, he did.

11 Q. When did he get them?

12 A. In the twelve years prior to the staph I would
13 say.

14 Q. What about corrective lenses, like eyeglasses or
15 contacts?

16 A. He had glasses that he seldom wore, maybe just
17 for reading.

18 Q. Did he ever get diagnosed with cataracts?

19 A. No cataracts.

20 Q. I know we talked a little bit about his
21 functional mobility in the last couple of years.

22 Did he ever drive a car?

23 A. A truck. He had given that up at least eight

1 years before his death.

2 Q. Why did he stop driving?

3 A. Because of inability to properly drive.

4 Q. Did one of his medical providers recommend that,
5 or is it a decision that he made?

6 A. No. Unfortunately, it was a decision that I
7 made.

8 Q. And what was that based on?

9 A. Pardon me?

10 Q. Why did you not want him to drive?

11 A. Because I was riding with him one day on a road
12 that was two lanes in each direction and he
13 refused to drive in his lane. He was straddling
14 both lanes and not negotiating turns well. And I
15 finally determined that, Chuck, you shouldn't be
16 on the road.

17 Q. And did he listen to you when you asked him to
18 stop?

19 A. He was very cooperative, no problem.

20 Q. When he had a medical appointment, how did he get
21 there most of the time? Did you take him, did he
22 have a service come?

23 A. No. That was -- I took him.

1 Q. During the last year, did he use a wheelchair
2 when he left the house?

3 A. Well, yes. I'd say the last two to three years I
4 actually had him up, put him in the car, carry
5 the chair.

6 Q. What type of vehicle did you have in January of
7 2020?

8 A. I still have my Chevy Trax.

9 Q. Did he have a scooter or a motorized wheelchair
10 at any time?

11 A. He did have a mobility scooter that the VA
12 provided for him to use. It was too hard to use
13 in the house. So it was meant for him to be able
14 to be mobile on our property and what have you,
15 but, you know, he was embarrassed to use it. He
16 didn't want to have people see him as disabled.
17 He very seldom used it.

18 Q. What other medical equipment did he have at the
19 house? I know we talked about a wheelchair.

20 A. Lift chair.

21 Q. You mentioned a lift chair?

22 A. Yes, we had a lift chair. I had also surprised
23 the VA by finding a toilet seat which was

1 hydraulic and would help him raise and slowly
2 lower him to a seated position, which they are
3 now using regularly. And it certainly helped me
4 not having to lift him.

5 Q. Did he require assistance with toileting near the
6 end there?

7 A. Towards the end that was more of a problem with
8 that, yes.

9 Q. Was there also an electric couch?

10 A. An electric couch?

11 Q. Yes. With like the heating coils or anything --

12 A. Oh, yeah. That was the type that had the --
13 well, it's like a lounge chair type thing. The
14 middle of it -- the sections on either end would
15 recline as a recliner.

16 Q. Did he or you use that on a daily basis?

17 A. Towards the end, no, because the couch was too
18 low for him to get back up off of easily.

19 Q. Did you ever have any problems with that couch?

20 A. No.

21 Q. Did you ever have any repairs or service done to
22 it?

23 A. No.

1 Q. Any other medical equipment at home? Did you
2 ever have a wheelchair ramp installed?

3 A. We had a very small type ramp that ran off the
4 hallway of the home into the laundry room in
5 order to be able to wheel the wheelchair over
6 that into his -- he had a -- we had a lift type
7 elevator actually installed in the garage that
8 would bring him up to floor level in the home.

9 Q. Where was the lift chair kept?

10 A. The lift chair was in the living room.

11 Q. If he was getting out of bed in the morning,
12 could he get himself into a wheelchair on his
13 own?

14 A. Ordinarily, yes. I would keep the wheelchair
15 right at the -- kind of near the middle of the
16 bed. And he would swing his legs out and use his
17 arm to get up and pivot into the chair.

18 Q. Was he able to use his left arm near the end?

19 A. Not for lifting or pulling or anything like that.
20 The hands were very mobile, it would support him,
21 but he couldn't do any pushing or pulling with
22 that. He had to use the right hand.

23 Q. And was he right-handed?

1 A. Yes.

2 Q. Did Chuck have any dietary restrictions?

3 A. Just the normal with limit your salt intake,
4 things like that.

5 Q. Was he a drinker? Did he consume any alcohol on
6 a regular basis in the last year of his life?

7 A. No.

8 Q. Do you know if he had any alcohol in the last
9 twenty-four hours before the incident?

10 A. No, he did not.

11 Q. In 2019, was there consideration of him being
12 placed in a long-term care facility?

13 A. In 2019? You might have to ask Jessica on that.
14 He was at one point in a nursing home type
15 setting, but I'm not sure if it was listed as a
16 long-term care facility.

17 Q. Was that a place in Rochester?

18 A. Okay. Yup.

19 Q. Do you remember if it was called GrandeVille?

20 A. Yes.

21 Q. Why did he go to that facility?

22 A. Because I had to go out of town. I believe it
23 was to my granddaughter's wedding. And Jess had

1 agreed -- his daughter had agreed to keep track
2 of him while he was at that facility. I believe
3 the woman who managed that facility was a sister
4 to her husband, to Jess's husband, or
5 sister-in-law. So he remained there for -- I
6 don't know, four days was it?

7 Do you remember?

8 MR. SCHWARZ: She can't answer that.

9 THE WITNESS: Not more than three or four.

10 BY MS. WANEMAKER:

11 Q. And after that, did he return to Bells Brook?

12 A. Yes, he did.

13 Q. Was he hospitalized at a VA facility in the last
14 five years?

15 A. No. He had stayed at a resident facility at the
16 VA at least once, I'm not sure if there was a
17 second trip or not, maybe approximately five
18 years before his death. But that was to give me
19 a break as a caretaker.

20 Q. Did he require twenty-four/seven care?

21 A. Definitely.

22 Q. And were you looking at different potential
23 long-term care facilities in the last couple

1 years, like Tanglewood or Wellsville Manor?

2 A. Definitely not.

3 Q. Did you say definitely not?

4 A. Not.

5 Q. Did he not want to go into a facility like that?

6 A. Well, no. I doubt there would be many who would
7 want to require nursing home care indefinitely.

8 Q. Did you ever talk to anybody at the VA about him
9 potentially going to a facility like Field of
10 Dreams or Tanglewood?

11 A. I did actually talk with Field of Dreams, their
12 facility, which would have been very near where I
13 lived, and he seemed to like the facility. We
14 toured it. And when they originally opened, they
15 were going to be equipped to handle him. When it
16 came down to the week of they were going to
17 accept him, they were not. They were not a
18 qualified facility to handle his needs.

19 Q. Was it that he required too high of a level of
20 care for what they could accommodate?

21 A. Yes.

22 Q. When you got that news, did you look at other
23 facilities?

1 A. I pretty much gave that up. His daughter and I
2 wanted to -- she's quite a distance from where I
3 live, and we couldn't really find any that had
4 decent ratings that fit our needs.

5 Q. Did he attend an adult daycare program at some
6 point?

7 A. Yes. He was with a facility in Olean one day for
8 one four-hour period a week, one day out of that
9 week. He went to that several times, but he
10 became disinterested, and I found several
11 incidents of things happening there to people
12 that should not have been happening. So he was
13 withdrawn, and he wasn't unhappy about it at all.

14 Q. Did he have anyone come to the house to help?

15 A. Yes. We had an aide that came in once a week.

16 Q. Was that through a company named Jan and Bev's?

17 A. Yes, it was.

18 Q. And was that ongoing up through January of 2020?

19 A. Yes, it was.

20 Q. What did they do when they came?

21 A. They helped with bathing him. If I needed
22 laundry done, they even did his laundry. The
23 aide and I worked together on changing his bed.

1 And if there wasn't a lot of work that needed to
2 be done, we quite often just sat and had a cup of
3 coffee and discussed the situation, what we might
4 be able to do different or better. I had a very
5 good aide that assisted me for many, many months.

6 Q. Did he have service through Meals on Wheels?

7 A. Yes, he did.

8 Q. And was that ongoing in January?

9 A. Yes.

10 Q. How often did they come?

11 A. That was daily, other than the weekends.

12 Q. Did Allegany County provide assistance with
13 handyman type work, yard work? The Office of
14 Aging.

15 A. No, that I didn't have available to me.

16 Q. Did some of the providers from the VA come to the
17 house for visits rather than him going there?

18 A. Yes. He got his vaccinations done at the house,
19 and they checked in regularly at least once a
20 month. I had at least one of them there, and at
21 one point I had three of them that came together.

22 Q. On the days that there wasn't help from an aide,
23 did you help him bathe and get dressed?

1 A. Yes.

2 Q. Did you make meals for him, at least on the
3 weekend when Meals on Wheels wasn't there?

4 A. Yes.

5 Q. Did you help him with grooming, things like
6 shaving?

7 A. Yes, I did.

8 Q. Did you take care of the housekeeping at Bells
9 Brook?

10 A. I'm sorry. I didn't understand that.

11 Q. Did you take care of the housekeeping, cleaning?

12 A. Yes.

13 Q. Was he able to assist with any of that at the
14 end?

15 A. Oh, no, definitely not.

16 Q. And did you help with cutting up his food when he
17 was having meals?

18 A. Yes.

19 Q. Did you help him use the phone?

20 A. He didn't use the phone.

21 Q. Did he use a computer to communicate by e-mail?

22 A. No, not at all. Never did.

23 Q. So I'm assuming, but I just want to make sure,

1 did he have any social media accounts like
2 Facebook or anything like that?

3 A. No.

4 Q. Did he use a computer at all?

5 A. No.

6 Q. I'm going to turn now to a different topic, the
7 laptop. Would you like to take a break before
8 we do that?

9 A. Yes.

10 (Whereupon, a short recess was then taken.)

11 BY MS. WANEMAKER:

12 Q. Ms. Marcellin, did you purchase the laptop
13 computer that is at issue in this case?

14 A. Yes.

15 Q. Where did you purchase it?

16 A. At Staples in Olean.

17 Q. Did you buy that in person?

18 A. Did I do what?

19 Q. Did you purchase it in person?

20 A. Yes.

21 Q. How did you pay for it?

22 A. Do not recall. I would say I brought a card, but
23 not definitely clear on that.

1 Q. Do you have any documentation, other than
2 anything that's already been provided in
3 discovery, relative to the purchase of the
4 laptop?

5 A. No. I lost all of that in the fire.

6 Q. When you purchased it, did you intend to buy a
7 new computer?

8 A. Definitely, yes.

9 Q. Did you believe it was new as opposed to
10 refurbished?

11 A. Definitely, yes.

12 Q. And did you think that it had an original
13 battery?

14 A. Yes.

15 Q. When did you purchase it?

16 A. In 2015.

17 Q. When in 2015?

18 A. Not certain. I would say the fall of 2015.

19 Q. Earlier on during this case, was it your belief
20 that you purchased it in 2011?

21 A. No.

22 Q. At any time did you believe that you purchased it
23 in 2011?

1 A. No.

2 MR. SCHWARZ: I'll stipulate that the lawyers made a
3 mistake in the Complaint and that's where the
4 2011 came from. But if you want to ask her about
5 that, that's fine.

6 BY MS. WANEMAKER:

7 Q. I'm going to show you one of the exhibits. I
8 think we're just going to do the original
9 responses to HP's interrogatories. I have this
10 marked as Exhibit 9.

11 MR. SCHWARZ: We'll stipulate that it says 2011 in
12 the interrogatory. And you can answer the
13 question if you want.

14 MS. WANEMAKER: I'm just trying to understand the
15 change in date from the two sets of
16 interrogatories.

17 MR. SCHWARZ: As I said, it was a mistake made by the
18 lawyers, not by Carol. But you can ask her about
19 that.

20 MS. WANEMAKER: Okay.

21 MR. SCHWARZ: But we'll stipulate that's what it
22 says.

23 Your screen has been actually frozen for

1 quite a while. We have the small screen for you.
2 MS. WANEMAKER: Okay. And given your stipulation, I
3 can avoid doing that. Is the screen functioning
4 now?

5 (Discussion off the record.)

6 BY MS. WANEMAKER:

7 Q. Just so it's clear for the record, Ms. Marcellin,
8 it was always your belief that you purchased the
9 laptop in 2015; is that correct?

10 A. That's correct.

11 Q. When you purchased that laptop, did anything come
12 with it?

13 A. I really do not recall getting anything with it.

14 Q. Did it come with a power cord?

15 A. Yes.

16 Q. Did it come with any other equipment?

17 A. No.

18 Q. Did it come with a manual?

19 A. I don't recall receiving a manual.

20 Q. Did you ever review a manual relative to the
21 laptop at issue?

22 A. For this particular laptop?

23 Q. Yes.

1 A. No.

2 Q. Did the laptop come with any warnings?

3 A. No documents at all.

4 Q. Did you ever review any warnings relative to the
5 laptop?

6 A. For that laptop?

7 Q. Correct.

8 A. No.

9 Q. And we're going to talk about different laptops
10 in a little bit, and I will refer to those
11 differently, but for now these questions are all
12 regarding the subject laptop. Okay?

13 A. Okay.

14 Q. Was there a warranty on the laptop?

15 A. Not that I can remember, no.

16 Q. Did you register the laptop?

17 A. If I did, it would have been online.

18 Q. How soon after you bought it did you register it?

19 A. I don't recall exactly, but I'm sure I would have
20 done it within a week.

21 Q. Did you ever have any service or maintenance done
22 to it?

23 A. No.

1 Q. Did you ever take it anywhere to be serviced?

2 A. No.

3 Q. Did anyone ever come to the house to perform
4 maintenance or service?

5 A. No.

6 Q. Were any modifications made to it by you or at
7 your direction?

8 A. No.

9 Q. Were any modifications made to it after you
10 purchased it, to your knowledge?

11 A. No.

12 Q. Was it ever dropped?

13 A. No.

14 Q. Was it ever damaged?

15 A. No.

16 Q. Did you have any problems or incidents with it
17 prior to the incident?

18 A. The only problem I had was when the Window 7
19 platform dropped. They weren't supporting it
20 anymore. I had wanted to transfer my information
21 and I -- it stopped and I had too much to do, and
22 I got a new one and it would not fully do that.
23 It wasn't updating to Windows 8 for me

1 adequately.

2 Q. And when were you trying to do that?

3 A. Probably in 2019 when I bought the other
4 computer. At Christmastime, I got a new computer
5 in December.

6 Q. And after you bought what I'm going to call the
7 2019 computer, you were trying to switch to
8 Windows 8 from Windows 7; is that correct?

9 A. Yes. Just to keep -- moving my bookmarks,
10 documents, things that I needed.

11 Q. And did you do anything to get assistance with
12 that?

13 A. No.

14 Q. Did it eventually work?

15 A. No.

16 Q. Were you able to transfer the information onto
17 the 2019 laptop at any time?

18 A. No.

19 MS. MASTRIANO: I'm sorry. I didn't hear if you got
20 Windows 8 to work. Did you?

21 MR. SCHWARZ: She asked if you got Windows 8 to work
22 on the old one.

23 THE WITNESS: No. They didn't have a function for me

1 on that computer.

2 BY MS. WANEMAKER:

3 Q. Did you contact HP or anyone else regarding that
4 issue?

5 A. No.

6 Q. Did you take it anywhere to get assistance with
7 that issue?

8 A. No.

9 Q. Was that issue ever resolved?

10 A. No.

11 Q. Did you have any other problems or issues with
12 the subject computer prior to the incident?

13 A. No.

14 Q. Did it ever run hot?

15 A. No.

16 Q. Did you ever get a different power cord for it?

17 A. No.

18 Q. Did you use the power cord that came with it?

19 A. Yes.

20 Q. And did you continue to use that power cord up
21 until the incident?

22 A. Yes.

23 Q. Did you have that power cord plugged in at the

1 time the incident occurred?

2 A. Yes.

3 Q. Had you ever left it plugged in overnight
4 previously?

5 A. No.

6 Q. How often did you use the subject laptop in the
7 months before the incident?

8 A. Almost every day.

9 Q. What did you use it for?

10 A. Mostly e-mailing, online shopping.

11 Q. Were you on any social media platforms back then?

12 A. No.

13 Q. Did you keep the subject computer in a certain
14 place in your house?

15 A. Yes.

16 Q. Where?

17 A. Usually on my desktop.

18 Q. In the office?

19 A. Yes.

20 Q. Did you ever use it in other rooms of the house?

21 A. There had been a couple of times that I had used
22 it in the kitchen at the table with Chuck, for
23 him to view something that would have been of

1 interest to him.

2 Q. Anywhere else?

3 A. No.

4 Q. And did Chuck ever use it?

5 A. No.

6 Q. Did anyone else ever use it?

7 A. No.

8 Q. And you said you had got -- you bought a new --
9 or, excuse me, another laptop in 2019; is that
10 correct?

11 A. Well, it was actually Christmas of 2018, but --
12 you know, I take that back. It was '19. I'm
13 losing track of when the fire was and what have
14 you. It was 2019. I'm sorry.

15 MS. MASTRIANO: Can we go off the record for just a
16 moment?

17 (Discussion off the record.)

18

19 EXAMINATION BY MS. MASTRIANO:

20

21 Q. Hi, Ms. Marcellin. My name is Maria Mastriano
22 and I represent Staples Inc. in this matter. I
23 just wanted to follow up on a couple questions.

1 And please let me know if you don't understand
2 and I'll do my best to clarify it.

3 I think that you testified that you're sure
4 that you purchased the laptop in 2015, correct?

5 A. Yes.

6 Q. Why do you think that? How do you know that it
7 was 2015?

8 A. Well, I'm basing that on my previous history of
9 purchases with Staples. My first purchase with
10 Staples was a desktop unit, which was a
11 three-piece unit, and that was I believe 2010.
12 And five years later I needed a laptop for
13 traveling. Chuck and I were doing things for
14 traveling around the country, and I wanted one
15 that we could travel with. So that's when I
16 bought the laptop.

17 Q. And so this was prior to Charles's dementia
18 setting in or --

19 A. Not hearing you.

20 Q. I'm sorry.

21 MR. SCHWARZ: Was it before Charles's dementia
22 diagnosis that you bought the laptop?

23 THE WITNESS: Oh, no. Prior to his diagnosis you

1 mean?

2 MR. SCHWARZ: Yes.

3 THE WITNESS: I thought you meant tied to it somehow.

4 BY MS. MASTRIANO:

5 Q. And when you said that you traveled around the
6 country, when did you do that?

7 A. Well, we did that probably three or four
8 different trips before he started, you know,
9 running into problems perhaps he wouldn't enjoy
10 that much. But we had gone to Atlantic City,
11 Myrtle Beach, Norfolk area.

12 Q. What I'm trying to get to is when was your first
13 trip? Because you're saying that --

14 A. That would have been around that 2015 period,
15 during that year probably.

16 Q. That's what I'm trying to get to. How do you
17 know it was 2015 and not 2016, or 2015 and not
18 2014? How are you pinpointing that date? If you
19 know.

20 A. Well, just basically memory.

21 Q. Now, I think before you said that sometimes you
22 -- you thought you bought this on a card; is that
23 correct? On a credit card?

1 A. I believe I would have, yes.

2 Q. Yes. I always use my card, but I guess sometimes
3 I use cash. Do you sometimes use cash on a large
4 purchase?

5 A. Usually not for a purchase of that size.

6 Q. You said usually not for a purchase of that size;
7 is that correct?

8 A. That's what I said, yeah.

9 Q. I know you said you lost a lot of paperwork in
10 the fire. Do you know if you could recover your
11 credit card statement from 2015?

12 A. I doubt very much because I don't know which
13 credit card might have been used.

14 Q. How many credit cards did you have?

15 A. At that time, probably two, plus the one through
16 my bank.

17 Q. You mean your debit card through your bank?

18 A. Well, they also -- I have a debit card and a
19 credit card with them.

20 Q. And when you purchased it, did you purchase it
21 with your own credit card? If it was a credit
22 card. I know you're not sure, but --

23 A. I'm not certain which card we would have used.

1 Q. Were these joint cards with Charles, or were
2 these just your own cards?

3 A. He had his. At that time it was just his card or
4 my card. It was always a matter of whether he
5 determined he was paying for it or I was, little,
6 like our dinner dates.

7 Q. When you bought the laptop and if you used a
8 credit card, I understand you're not sure if it
9 was cash or credit card, but if -- because you're
10 the one purchasing it, if you used a credit card,
11 was it your own credit card?

12 A. Not certain. Could have been his, could have
13 been mine.

14 Q. Do you know if that purchase was ever put on any
15 type of an account at Staples for you or for
16 Charles?

17 A. We had a loyalty card. Each of us had one, but
18 I'm not certain if we thought to use it.

19 Q. That was my next question. Do you always use
20 your loyalty card or not? And especially in a
21 purchase like this, it would be good to use it.
22 Do you know?

23 A. I know. Didn't always remember to do that,

1 though.

2 Q. And I know that counsel is going to get into this
3 in a minute. I just have one quick question for
4 you which is, you're saying that you go based on
5 your history of buying computers. That's how you
6 know this was 2015. Prior -- I heard you say in
7 2010 you purchased a desktop, correct?

8 A. Approximately 2010, yes. It was about five years
9 old also. Yes, wanted the laptop to travel with.

10 Q. Did you buy this 2010 desktop from Staples?

11 A. Staples.

12 Q. Where is that 2010 desktop now?

13 A. Long gone.

14 Q. At the time of the accident, did you still have
15 this desktop, the 2010 desktop?

16 A. I believe I still had the monitor.

17 Q. Do you know if you had the CPU or --

18 A. No, I didn't have any of that. The CPU and the
19 keyboard were gone.

20 Q. How about the cord to the desktop?

21 A. Gone.

22 Q. So you just had the monitor? Was that monitor
23 attached to anything or --

1 A. Well, no. It was a freestanding monitor.

2 Q. Did you use it with your laptop or did you --

3 A. No.

4 Q. So you had the monitor, but you were not using it
5 at the time of the incident, correct?

6 A. The monitor was pushed to the back of my desktop.

7 Q. Now, I heard you say before that you don't
8 remember if you received warnings. I'm not clear
9 on it. You don't remember seeing warnings or you
10 did not receive warnings, which one was it?

11 A. I didn't get that. Did I what?

12 Q. Do you know if you received warnings with the
13 2015 laptop?

14 A. No, never received a warning.

15 Q. Do you know if one was in the packaging or on the
16 box when you received the laptop?

17 A. There was no packaging.

18 Q. There was no packaging?

19 A. I don't recall.

20 Q. I'm sorry?

21 A. There was no packaging with it as I recall. It
22 was sold from the display without a box, with a
23 cord, no literature.

1 Q. I think earlier counselor had asked you if the
2 2015 laptop ran hot and -- meaning would it be
3 warm or hot at certain times, the laptop?

4 A. No.

5 Q. Would it get warmer when you were charging it?

6 A. Not to my knowledge.

7 Q. Did you ever put your hand on the top of the
8 laptop to feel it?

9 A. No. I put it on charge. I would be going off to
10 do something else and come back an hour later and
11 put it away, you know, unplug it.

12 Q. Well, I heard you say that you never left it
13 overnight, except on this particular night; is
14 that correct?

15 A. Correct. I had -- just before I decided to go to
16 bed and shut it down, it had given the notice
17 that I -- I had an update that needed to be done.
18 So I clicked on the brief update rather than
19 doing the entire scan because I knew that would
20 take a lot longer. And unfortunately, I went to
21 bed and went to sleep, which I would not normally
22 do, nor do again.

23 Q. Also, when you said that you bought the laptop,

1 you said that you were in person in the Staples
2 store in Olean, correct?

3 A. Yes.

4 Q. And you were at the desk. Were you at the
5 display case?

6 A. Yes.

7 Q. And you're saying that this laptop was a new
8 laptop that came out of the display case?

9 A. Well, it wasn't inside a case. It was on a
10 display table, three other laptops on it, if I
11 recall, and I narrowed it down to two. And
12 salesman came to me and I discussed briefly with
13 him about which laptop would be the better option
14 for me. And I was surprised that he had
15 recommended the lower price one rather than the
16 other one that would have been one hundred
17 dollars more approximately. I was puzzled, but
18 he didn't really give me an explanation. But for
19 my needs, he thought it was the best option, and
20 I thought okay.

21 Q. Do you know if they had a deal on that type of
22 laptop at that time and maybe that's why he
23 suggested that one?

1 A. No. No sale markings, no nothing. No percent
2 off, nothing like that.

3 Q. So when you went to purchase it, what you're
4 saying is there's three laptops on a display,
5 right?

6 A. Four.

7 Q. Three others, plus the subject laptop, correct?

8 A. Yes.

9 Q. And so what was under the display?

10 A. I never paid any attention. Just a basic
11 support, you know.

12 Q. Was it a table or was it boxes of computers, is
13 what I'm asking?

14 A. Oh, no. It wasn't boxes of computers. It was
15 just a table type, all the same color. White, if
16 I remember right. Base and white tabletop.

17 Q. And so you're saying that the salesperson took
18 the computer off of that table and that's the one
19 you took home? You didn't take one home that was
20 in a box?

21 A. No. That was right from that table.

22 Q. And did the cord come in any packaging, or was
23 that with it in that display?

1 A. No.

2 Q. Had you ever bought a new cord for the 2015
3 laptop?

4 A. No.

5 Q. Because you said you did some online shopping,
6 and I know you could get stuff there. Did you
7 ever online shop for computer accessories?

8 A. Not for anything for Hewlett Packard.

9 Q. What did you shop online for before?

10 A. The Compaq computer, which is no longer in
11 existence, I had shopped for a new battery for a
12 Compaq computer, many years before. Back in the
13 '90s, early '90s probably. And that was a very
14 simple procedure. Got the battery, did the
15 battery on the back from the opening on it. That
16 was like your battery opening on your TV remote.
17 Click it, lift it, reinsert, close it up.
18 Nothing like what's going on today I guess for a
19 battery replacement where I would have had to
20 connect leads, as they're telling me, or
21 something.

22 Q. In terms of that Compaq, I know it's from a long
23 time ago, do you still have that Compaq?

1 A. That Compaq went with the fire. It was sitting
2 in the closet.

3 Q. It was in the closet?

4 A. It was in the room, in the same room. It's gone.

5 Q. My question was going to be, did you ever use a
6 battery or a cord from that Surface (sic)?

7 A. No.

8 Q. No?

9 A. No.

10 MS. MASTRIANO: Okay. I think that's all I've got
11 for now. Thank you.

12 MS. WANEMAKER: I'm just going to get back to where
13 we were.

14 BY MS. MASTRIANO:

15 Q. Oh. Ms. Marcellin, do you still have the same
16 credit card now that you had back in 2015?

17 A. No, I don't. I'm sorry.

18 Q. Do you know which credit cards they were in 2015?

19 A. I really don't, but I remember having a Citibank
20 card at one time. But what the other one was, I
21 do not know.

22 MS. MASTRIANO: Okay. Got it. Thanks.

23

1 RE-EXAMINATION BY MS. WANEMAKER:

2

3 Q. Taking you back to the computer you purchased in
4 -- around Christmas. And just to clarify, you
5 said that was Christmas of 2019 or '18, correct?

6 A. 2019.

7 Q. Where did you purchase that?

8 A. That I believe was ordered from QVC online.

9 MS. MASTRIANO: I'm sorry. What did you order from
10 QVC?

11 THE WITNESS: The 2019 laptop.

12 BY MS. WANEMAKER:

13 Q. Have you ever purchased any computer or computer
14 accessories from QVC previously?

15 A. No.

16 Q. Was the 2019 laptop new or refurbished when you
17 purchased it?

18 A. New.

19 Q. And why did you purchase the computer at that
20 time?

21 A. Because the 2015 wasn't updating for me to
22 Windows 8. So I was going to get a new computer,
23 new laptop.

1 Q. Do you recall the purchase price for either the
2 2019 laptop or the subject laptop?

3 A. No, I don't recall.

4 Q. Did the 2019 computer come with a power cord?

5 A. Yes.

6 Q. Did it come with a battery?

7 A. Yes.

8 Q. Did it come with a manual?

9 A. Yes.

10 Q. Did it come with warnings?

11 A. I believe it did.

12 Q. Did you review the manual and the warnings?

13 A. Yes.

14 Q. Did you keep those?

15 A. Yes, but they were destroyed.

16 Q. Where did you have them? Where were they when
17 the incident occurred?

18 A. In a filing cabinet right next to the desktop
19 where I had the computer.

20 Q. In the office?

21 A. In the office, yes.

22 Q. Did you ever use the power cord from the 2019
23 computer in the other computer?

1 A. No.

2 Q. In any other computer?

3 A. No.

4 Q. Did you have any service or maintenance done to
5 the 2019 computer?

6 A. No.

7 Q. Where did you -- where was the 2019 computer at
8 the time the incident occurred?

9 A. Sitting across the room on -- what was actually
10 part of my sewing kit.

11 Q. Between the time that you purchased the 2019
12 laptop and the date of the incident, did you
13 continue to use the subject laptop? Do you want
14 me to rephrase that?

15 A. Yeah. Would you try that again?

16 Q. Sure. After you bought the 2019 laptop, did you
17 continue to use the subject laptop?

18 A. Yes. Briefly, you know.

19 Q. Did you register the 2019 laptop?

20 A. Yes.

21 Q. What type of laptop was that, the 2019?

22 A. That was an HP.

23 Q. How soon after you got it did you register it?

1 A. Within a week.

2 Q. Did you have any problems or issues with the 2019
3 laptop?

4 A. Well, I didn't have much time to have trouble
5 with it because I only had it a short time.

6 Q. So between the time you got it and when the
7 incident occurred, you did not have any issues or
8 problems with it, correct?

9 A. No.

10 Q. Did it ever run warm or hot?

11 A. No.

12 Q. And you said that there was another computer in
13 the house that was a Compaq from the 1990s; is
14 that correct?

15 A. Yup, early '90s.

16 Q. And you also talked about having the monitor from
17 an old desktop computer?

18 A. Yes.

19 Q. Other than those computers, were there any other
20 computers in the house at the time of the
21 incident?

22 A. No.

23 Q. And you said that the Compaq from the '90s was in

1 the closet in the office at the time of the
2 incident; is that correct?

3 A. Yes. It's in a laptop bag inside the closet
4 that's in that room.

5 Q. Was it on a shelf in the closet, on the floor,
6 something else?

7 A. It sat on the floor.

8 Q. What color was the laptop bag?

9 A. Gray.

10 Q. When had you last used the 1990s computer before
11 the incident?

12 A. I couldn't even tell you how many years in
13 between there was there. I always thought I
14 would have it redone, you know, rebuilt. I liked
15 the keyboard on that much more than I have any
16 laptop I've ever owned.

17 Q. Where did you purchase that computer, the Compaq?

18 A. That was in Orchard Park, Buffalo.

19 Q. At a store?

20 A. Yeah. I forgot the name of it. Circuit City
21 located in Millcreek Mall Plaza. Is it
22 Millcreek?

23 Q. McKinley Mall?

1 A. McKinley. Gotcha.

2 Q. Do you recall how you paid for that computer?

3 A. Pardon me?

4 Q. Do you recall how you paid for it?

5 A. Oh, golly, no. Way too long ago.

6 Q. And what did that one come with?

7 A. Cardboard box.

8 Q. Did it come with a power cord?

9 A. Yes.

10 Q. Did it come with a manual?

11 A. Yes.

12 Q. Did it come with warnings?

13 A. No, not that I recall.

14 Q. Did you review the manual?

15 A. Yes.

16 Q. Did you keep the manual?

17 A. I don't think -- I probably did.

18 Q. Did the manual contain any warnings?

19 A. Not that I noticed or remember.

20 Q. And that Compaq, was that on the floor of the
21 closet in your office at the time the incident
22 occurred?

23 A. Yes, it was.

1 Q. Did you ever have it serviced, maintained?

2 A. No.

3 Q. Did you ever have any problems with it?

4 A. No.

5 Q. Were any modifications made to it?

6 A. Excuse me?

7 Q. Were any modifications made to it?

8 A. No.

9 Q. Did you get a replacement battery for it?

10 A. No. That's an error. That's the one I ordered
11 the replacement battery for and replaced it in
12 the Compaq.

13 Q. When did you do that?

14 A. Pardon me?

15 Q. When did you do that?

16 A. Well, it was probably five years old
17 approximately before I did that.

18 Q. I thought you said it was bought in the early
19 '90s?

20 A. Yeah.

21 Q. Let me just show you what's been marked as
22 Exhibit 11.

23 MR. SCHWARZ: Let's take a break.

1 (Whereupon, a short recess was then taken.)

2 BY MS. WANEMAKER:

3 Q. I'm going to share the screen with what I've had
4 marked as Exhibit 11, which I understand is a
5 credit union statement. It's a two-page
6 statement. It was produced in discovery. Are
7 you able to see that?

8 MR. SCHWARZ: Yes. Is there something in particular
9 you want us to look at, though?

10 MS. WANEMAKER: Yes. I want to direct Carol's
11 attention to the transaction dated 7/22, listed
12 as Factory Outlet Store dot com for a purchase in
13 the amount of sixteen dollars and seventeen
14 cents.

15 BY MS. WANEMAKER:

16 Q. Carol, do you recall what that purchase was for?

17 A. I cannot see the dates and stuff.

18 MR. SCHWARZ: It looks like July 22nd. What year is
19 it?

20 MS. WANEMAKER: The statement is due on August 27th
21 of 2015.

22 MR. SCHWARZ: So July 22nd in 2015. Do you recall
23 what you bought from that outlet in 2015?

1 THE WITNESS: That would have had to have been --
2 well --

3 MR. SCHWARZ: If you have no recollection, you should
4 tell her. Do you have any recollection for a
5 sixteen dollar purchase?

6 THE WITNESS: Well, like I said, I did buy a
7 replacement battery for the Compaq, and that may
8 very well be where it came from.

9 MR. SCHWARZ: This was in 2015, and that would be a
10 pretty big --

11 THE WITNESS: Big jump, yes.

12 MR. SCHWARZ: And also would be a very low price for
13 that.

14 THE WITNESS: No, definitely do not remember.

15 BY MS. WANEMAKER:

16 Q. At some point did you purchase a replacement
17 battery for the Compaq computer?

18 A. That probably would have been the place I ordered
19 from for the Compaq. Obviously the dates don't
20 really make sense.

21 Q. Did you purchase more than one replacement
22 battery for the Compaq?

23 A. No.

1 Q. And when you purchased it, did you buy it online?

2 A. Yes.

3 Q. Where did you buy it online from?

4 A. I do not recall. That would have had to have
5 been some sort of an online battery store or had
6 them available there. I can't guarantee that
7 that's it or not it.

8 Q. Do you recall what you paid for the battery?

9 A. No.

10 Q. What type of battery was it that you purchased?

11 A. It's for a Compaq computer. I would have no idea
12 what types these use.

13 Q. How would you determine what type to get?

14 A. By model number.

15 Q. Can you describe the battery that you obtained?

16 A. Not really. It's been too long ago.

17 Q. Do you recall whether it was lithium-ion battery
18 or some other type?

19 A. Do not know.

20 Q. Who was the manufacturer of the battery that you
21 purchased?

22 A. I don't know.

23 Q. And you talked earlier about installing that

1 battery in the Compaq, correct?

2 A. Yes. Very easily open, you know, just like a
3 remote control for your TV, lift it out, put it
4 in.

5 Q. Did you do that by yourself?

6 A. Yes. There was nothing to attach. It's just a
7 drop-in.

8 Q. And after you did that, did that battery remain
9 in the Compaq up until the incident occurred?

10 A. Yup. Sure did.

11 Q. Is it possible that the battery you purchased
12 online was put in the subject laptop rather than
13 the Compaq?

14 A. Oh, no. Would not have. Never.

15 Q. When you installed the new battery in the Compaq,
16 did it show confirmation on the screen that it
17 had been done?

18 A. Yes. And it actually operated fine, except very
19 slow. That's why I eventually moved on to buying
20 a new laptop.

21 Q. Why did you get the replacement battery in the
22 first place?

23 A. Because my laptop had slowed down in performance.

1 I was assuming it might be the battery.

2 Q. Did anyone tell you it might be the battery?

3 A. No.

4 Q. After you installed the battery, did the
5 performance improve?

6 A. It did, yeah.

7 Q. Did the new battery work?

8 A. Yes.

9 Q. Did you have any problems or issues with it after
10 the time you installed the battery up until the
11 time you stopped using it?

12 A. No.

13 Q. Did that computer ever run hot?

14 A. No.

15 Q. Did you have any service or maintenance done to
16 the Compaq after installing the new battery?

17 A. No.

18 Q. What did you do with the original battery for the
19 Compaq?

20 A. It was taken to a recycle center somewhere like
21 Home Depot where they accept, you know, the
22 batteries to dispose of.

23 Q. Turning your attention now back to the subject

1 laptop, was the battery in that laptop ever
2 changed or replaced from the time you purchased
3 it up until the incident occurred?

4 A. No.

5 Q. So when the incident occurred, the same battery
6 was in it that came with it when you bought it,
7 correct?

8 A. Yes, definitely.

9 Q. And it was never changed?

10 A. No.

11 Q. Did you ever receive any alerts or notifications
12 on the subject laptop relative to the battery?

13 A. No.

14 Q. Did you ever replace the batteries in any other
15 computers?

16 MR. SCHWARZ: Other than the ones she's already
17 testified to?

18 MS. WANEMAKER: Yes.

19 THE WITNESS: Just the Compaq. None other.

20 BY MS. WANEMAKER:

21 Q. Did you ever purchase any other batteries for any
22 other computer, other than the ones you've
23 already testified?

1 A. No.

2 Q. I'm going to show you what I've had marked as
3 Exhibit 3, which is a photograph. It's one page.
4 Let me know if you're able to see.

5 MR. SCHWARZ: Yes, we can see the picture.

6 BY MS. WANEMAKER:

7 Q. Ms. Marcellin, can you tell me what this
8 photograph shows? And let me know if you want me
9 to make it bigger. It is just this one page.

10 A. Bigger would be better, but it depends on what
11 we're zoning in on here.

12 Q. Is this the office in your house?

13 A. Yes. Office -- you're looking at a sewing table
14 straight in front of you with a laptop sitting on
15 to top of it, but it is not the subject laptop.
16 It is the new one that was purchased at
17 Christmastime in 2019 that also was lost in the
18 fire.

19 Q. And that was what my question is. This computer
20 right here, that's the 2019 laptop, correct?

21 A. Yeah. Yeah.

22 Q. Did you have a sewing machine in that room as
23 well?

1 A. Actually -- normally it would have been, but I
2 had moved it into my back bedroom, which was
3 adjacent to it, to give me more room to shove
4 that little thing I sat on underneath my desk
5 because that's usually where I stored it before.

6 Q. And then I'm going to show you another picture
7 and this has been marked Exhibit 2. And again,
8 it's one page.

9 MS. WANEMAKER: Just so you know, these are all from
10 the HP document production. This is HP00470,
11 which you can see on the bottom here. They have
12 the Bates numbers on them and I'll provide these
13 after.

14 BY MS. WANEMAKER:

15 Q. Ms. Marcellin, showing you Exhibit 2, can you
16 tell me what this depicts?

17 A. Yes. That would be the armoire unit that housed
18 the subject laptop, and the monitor from the
19 older desktop set that I had -- that I still had
20 in that unit.

21 Q. And is the monitor kind of in the center here on
22 the taller shelf of the desk?

23 A. Yes. That's the monitor that I hung onto after

1 disposing of the older equipment, the three-piece
2 unit.

3 Q. And then sort of right below that, there's an
4 open laptop. Is that the subject computer?

5 A. That's the subject laptop.

6 Q. Is there a keyboard located kind of behind that?

7 A. It could be. I might have kept that. I do not
8 recall.

9 Q. Do you recall having a keyboard there at the time
10 of incident?

11 A. I don't really recall that, but it could have
12 been the keyboard from the old three-piece set.

13 Q. And then I'm going to zoom back out.

14 Can you identify what is kind of on the
15 bottom left of the subject laptop? And I can
16 zoom in if you'd like.

17 A. I cannot remember what that would have been.

18 Q. Did you have a computer tower from any other
19 computer at that time?

20 A. Yeah, that three-piece unit. But that would have
21 been long gone, I believe before that fire. I
22 don't know. It doesn't quite look like the tower
23 that I had. I don't know.

1 Q. Any explanation for what that is or where it came
2 from?

3 A. No. Don't recall.

4 Q. If you could just take me through what else is
5 depicted in this photograph. Let's start with
6 the piece of furniture. It's like a fold-out
7 desk. Armoire I believe is the word you used?

8 A. Yes. It's an armoire unit, yes.

9 Q. And it looks like it had a fold-out shelf for the
10 computer.

11 A. To pull out, yeah. In a drawer.

12 Q. In a drawer?

13 A. Yes.

14 Q. Do you recall what was inside the drawer, if
15 anything?

16 A. I really don't remember what's in there or what.
17 There might have been some discs in there. Other
18 than that, I'm sorry, I don't recall.

19 Q. Is the subject laptop sitting on top of anything
20 or just the fold-out shelf?

21 A. Just the shelf.

22 Q. Is there also -- did you have a video camera to
23 enable you to be on video chat and that sort of

1 thing?

2 A. No, not that I'm aware of. I don't remember.

3 Q. Is there any other computer equipment, like a
4 mouse?

5 A. No. I would have had a mouse that went with it,
6 but that might have been removed from the pullout
7 at the time that they were examining it there,
8 because I would have never have pulled it out and
9 left my laptop hanging over the edge like it is.
10 So that must have been filmed taking pictures of
11 -- during the exam of the fire area by the people
12 who came in there I would say.

13 Q. And how did you leave the laptop that day when
14 you went to bed?

15 A. I left it open, but it would not have been
16 hanging off the shelf like it is there.

17 Q. Was it on --

18 A. On the shelf fully.

19 Q. But just not hanging off like shown here?

20 A. No.

21 Q. Did you have a printer?

22 A. Yes, I did. It would have been to the right of
23 the armoire, sitting on top of the file cabinet I

1 believe.

2 Q. Is the file cabinet visible in this photo?

3 A. Well, it should be unless they pulled it out of
4 there, but I cannot tell looking at it. It sat
5 right adjacent to that right-hand side.

6 Q. Was it a metal file cabinet or wood or something
7 else?

8 A. It was wood. Oak, as a matter of fact.

9 Q. Are you able to identify anything that's located
10 on the floor?

11 A. No. Well, I never left my room in that kind of a
12 mess, so I'm thinking that people moved things
13 around while they were exploring.

14 Q. Just taking you back to different things that you
15 can identify in this photo. Is this a mirror
16 right here?

17 A. Oh, yes. Matter of fact, Chuck's daughter bought
18 me that.

19 Q. Did it light up?

20 A. Yes.

21 Q. Did you have any other appliances or electronics
22 in this room at the time of the incident?

23 A. No, that would have been it. Printer and what

1 you see there. And like I said, even the sewing
2 machine was out of there at that point.

3 Q. I'm going to show you different photos of the
4 closet, if you'll bear with me.

5 MS. WANEMAKER: And I put these two together. These
6 are two photos that I marked as Exhibit 4, and
7 they're HP Bates numbers 00440 to 441. So
8 there's two on this one or together, at least in
9 my mind.

10 BY MS. WANEMAKER:

11 Q. Let me show you the full picture. This is the
12 first page, it's pretty dark, and this is the
13 second page. Showing you the second page of
14 Exhibit 4, does that depict the closet in the
15 office?

16 (Discussion off the record.)

17 BY MS. WANEMAKER:

18 Q. I apologize. Is this better?

19 So this is the first page of Exhibit 4, it's
20 more of a dark photo, and the second page. And
21 I'm going to minimize this one so you can see the
22 whole thing. Does this depict the office and the
23 closet?

1 A. I cannot identify a thing you got there. It's
2 terrible.

3 Q. That's okay. So this is what to me looks like,
4 in the bottom right-hand corner of the screen, an
5 open cabinet.

6 A. Okay.

7 Q. Did you have an ironing board in the closet on
8 the door?

9 A. Okay. Yes. I've got that.

10 Q. What else did you have in the closet?

11 A. Well, there was extra bedding in there on those
12 upper shelves, and nothing was on the floor. I
13 do not remember -- other than the computer and
14 bag that sat in the back left-hand corner, I
15 remember that, but I cannot recognize anything
16 looking at that. But that could be my bad
17 eyesight too.

18 MS. WANEMAKER: I do have a couple additional
19 pictures of the closet from that same production.
20 Let me pull these up. It might be more helpful.

21 This is marked as Exhibit 5. And this is
22 Bates stamped HP00463, 465, 466, 467, 468 to 469.

23 BY MS. WANEMAKER:

1 Q. It's multiple pages. And I'll scroll down
2 through all of it so you can get the full view
3 first. Some of them are darker, as you can see.
4 I'm going to take you up to that first page of
5 Exhibit 5 and make it so you can see the entire
6 photo there. Does this depict the closet in the
7 office?

8 A. Yeah. That's the only place I had that hanging
9 ironing board, so yes.

10 Q. On the bottom here -- I know you mentioned some
11 bedding on the shelves. Are you able to tell if
12 there's additional bedding on the bottom there?
13 It looks like it's bedding.

14 A. There would have been no flooring at the floor
15 level, it would have all been on the shelving
16 area.

17 MR. SCHWARZ: It could have fallen.

18 THE WITNESS: I don't know. Yeah. I can't recognize
19 any of that all burnt like it is.

20 BY MS. WANEMAKER:

21 Q. Are you able to identify the Compaq computer in
22 this photo?

23 A. Not really. Like I said, it would have been in

1 the bag, but the bag may have burned up. I can't
2 distinguish anything there recognizable at all.

3 Q. And you said the bag would have been in the
4 bottom left of the closet; is that right?

5 A. Yeah.

6 Q. What else did you have in the closet at the time
7 of the incident?

8 MR. SCHWARZ: Why don't you pull that picture up
9 again? That would be helpful.

10 THE WITNESS: It just looks like whatever it was
11 melted and nothing recognizable. Even that thing
12 that sits in the center there could have been an
13 electric fan, but who knows.

14 MR. SCHWARZ: Did you keep your iron in there to use
15 with the ironing board?

16 THE WITNESS: Yeah. That could be it. That looks
17 like too much cord. I think the cord would have
18 melted, but it could be. I don't know.

19 BY MS. WANEMAKER:

20 Q. Did you keep any cleaning supplies in this
21 closet?

22 A. No.

23 Q. Did you keep any cleaning products in that

1 closet?

2 A. No.

3 Q. Did you keep any batteries in that closet?

4 A. No.

5 Q. What about any items like nail polish or nail
6 polish remover, did you keep that in that closet?

7 A. No.

8 Q. Did you keep hand sanitizer in that closet?

9 A. No.

10 Q. Did you keep any lighters in the closet?

11 A. No.

12 Q. I apologize. I didn't catch your answer.

13 A. No.

14 Q. Okay. I can identify the word set on this.

15 A. On what?

16 MR. SCHWARZ: The word set.

17 THE WITNESS: Set?

18 BY MS. WANEMAKER:

19 Q. Yes. It looks like it's upside down.

20 A. I see that.

21 Q. Any idea what that was?

22 A. I really don't.

23 Q. I'm going to stop the share.

1 Did you keep paper for the printer in the
2 office?

3 A. No. Actually, that probably would have been in
4 that bottom drawer of that armoire.

5 Q. The drawer in the bottom right of the armoire?

6 A. Yeah.

7 Q. Did you keep toner or ink for the printer in
8 there?

9 A. No.

10 Q. Did you keep it somewhere else in the house?

11 A. Usually I didn't keep extras of the toner and
12 stuff. It would have been in the printer.

13 Q. Did you keep any keyboard dust devices in that
14 room?

15 A. Like compressed air and stuff?

16 Q. Yes, exactly.

17 A. It would have been in my garage.

18 Q. Did you have any aerosols in the office/sewing
19 room at the time of the incident?

20 A. No.

21 Q. Back in January of 2020, did you have a landline
22 phone?

23 A. Yes, I did.

1 Q. And was it a cordless phone or a phone that had a
2 cord on it?

3 A. It had a portable handset, yes, which was in the
4 room at the time of the fire. That's why I had
5 to use my OnStar in my car to call for emergency
6 services.

7 Q. So the portable handset was in the office at the
8 time of fire?

9 A. Yes, because a phone call -- after Chuck had gone
10 to bed, I was at the computer in back, and I had
11 sorted out all our tax forms in preparation for
12 the next couple days filing our taxes. Well, the
13 phone rang. Of course it was a telemarketer
14 calling after hours. And so I took the phone,
15 took it to the back room with me. Otherwise, it
16 probably would have rung again and woke him up.
17 So when the fire started, unfortunately, I had
18 left it back there.

19 Q. Did you have any other phone receivers in the
20 house at that time?

21 A. No.

22 Q. Did you have a cell phone?

23 A. I did have a cell phone.

1 Q. Where was that cell phone when you went to bed
2 that night?

3 A. That cell phone was on the top of the headboard.
4 When we moved the covers back on the bed when we
5 smelled smoke -- or, I did, that cell phone took
6 a flight, unfortunately. And it was later found
7 underneath my dresser in the corner of the
8 bedroom. Could not find it in a hurry in that
9 emergency.

10 Q. And you said it was found where?

11 A. Underneath a dresser. It was in the -- well,
12 driveway side of that corner of my bedroom.

13 Q. Master bedroom?

14 A. Yeah.

15 Q. Were there any other phones in the house?

16 A. No.

17 Q. And Chuck did not have a cell phone, correct?

18 A. No.

19 MS. MASTRIANO: I'm sorry. Was that correct, Ms.
20 Marcellin?

21 THE WITNESS: What was that?

22 BY MS. WANEMAKER:

23 Q. Did Charles have a cell phone?

1 A. No, no cell phone for Charles.

2 Q. So taking you back to January 23rd of 2022.

3 A. 2022?

4 Q. I'm sorry. 2020. Thank you.

5 A. January?

6 Q. Yes. Like the day before, January 23rd, what did
7 you do?

8 A. What are we looking for for an answer here for?

9 The particular day of the fire you mean?

10 Q. Yes. What did you do during that day?

11 A. Through the day before the fire happened? Wow.

12 Well, took care of Chuck basically. I don't
13 remember what day of the week it was on, if I had
14 an aide come in that day or not. Would not
15 recall that. Just general routine and keeping up
16 with his needs. Making lunch, breakfast,
17 whatever, making the bed, maybe doing laundry.
18 Hard to say. The usual routine of keeping a home
19 and taking care of whatever he needed, getting
20 him back and forth to the bathroom.

21 Q. Did you go anywhere that day? Did you leave the
22 house?

23 A. I don't recall if I did or not.

1 Q. Did anyone come to the house that day?

2 A. That's what I said. I don't recall if I had an
3 aide that day or not.

4 Q. Other than an aide, did anybody else come?

5 A. No.

6 Q. I apologize. I just didn't hear your answer.
7 Did you say no?

8 A. No.

9 Q. Thank you. Did any of the aides that came smoke?

10 A. If they did, they took a break outside because I
11 didn't allow smoking in my home by anyone.

12 Q. We had talked about this a little earlier and I
13 don't mean to be redundant. But if you could
14 just take me through, I understand you were
15 downloading software that evening; is that
16 correct?

17 A. Not software. The virus type -- virus scan.

18 Q. Antivirus?

19 A. Yeah, the antivirus stuff.

20 Q. What time did you start doing that?

21 A. I would say approximately nine-thirty p.m.

22 Q. What time did you receive the phone call from
23 that telemarketer?

1 A. About eight, eight-thirty. Closer to
2 eight-thirty probably. It was getting late.

3 Q. Do you recall where they were from?

4 A. No, because I probably told them I didn't want
5 any and hung up.

6 Q. Was Chuck already in bed at the time of that
7 phone call?

8 A. Yes. That's why I went and got the phone from
9 the kitchen wall and took it back to the room
10 where I was. So if it happened again, it wasn't
11 going to disturb him because it was just a
12 couple, you know -- away from his bed -- bedroom.

13 Q. What type of antivirus stuff were you
14 downloading?

15 A. Try again. What was I using?

16 MR. SCHWARZ: What was the antivirus software? If
17 you know the name.

18 THE WITNESS: Norton. It was a Norton product.

19 BY MS. WANEMAKER:

20 Q. Had you ever used that product before?

21 A. Always used it.

22 Q. And you said that you received a notification on
23 your screen about it; is that correct?

1 A. Yeah. It would do that quite often, you know,
2 when it felt I needed an update. It would flash
3 a little sign in the corner and I picked the
4 usual day -- especially if it's later in the day,
5 the short version. I didn't want them going on
6 for ages.

7 Q. And when you had downloaded it previously, how
8 quickly did the download take to complete?

9 A. Oh, golly. If I stayed in the room with it.
10 Sometimes I did, sometimes I didn't. Sometimes
11 it was as quick as two or three minutes.

12 Q. And did you stay with this download for any
13 period of time before going to bed?

14 A. Did I what?

15 MR. SCHWARZ: Did you stay and watch it for any
16 period of time before you went to bed?

17 THE WITNESS: No. I was exhausted and I was ready
18 for bed. So I did the unthinkable and left it
19 running. Thinking, well, usually in the middle
20 of the night I'm getting up to go to the bathroom
21 or take him, and then I would go unplug it. But,
22 as luck would have it, we both slept through the
23 night.

1 BY MS. WANEMAKER:

2 Q. Did you check on it at all prior to --

3 A. No.

4 Q. What time did you go to bed?

5 A. About nine-thirty.

6 Q. Normally when you were done using the subject
7 laptop for that day or that period, would you
8 shut it off?

9 A. Oh, yes. Turn it off, unplug it, wrap the cord
10 around it and close it up in my armoire, because
11 I had a cat that I always worried about chewing
12 on the wires. So I closed it off always to
13 prevent that issue.

14 Q. And when you shut it down previously, would you
15 go through the process of using like the start
16 button on the computer and then selecting
17 shutdown, or would you just kind of close the
18 lid?

19 A. Oh, no. I went through the process.

20 Q. And did you say -- I'm not sure if you said you
21 put it in a box. On other occasions when you had
22 finished using the computer for the day and you
23 shut it down, what would you do with it after you

1 used it and shut it down?

2 A. Close the cover, unplug it, wrap the cord around
3 it, shove the shelf back in, slide the shelf in
4 and close the armoire.

5 Q. So you put it in the armoire and shut the armoire
6 doors?

7 A. Yes.

8 Q. I'm going to show you another exhibit really
9 quick. It's a diagram of the house. It's not to
10 scale.

11 MS. WANEMAKER: It's HP00399 and it's one page,
12 Exhibit 6.

13 BY MS. WANEMAKER:

14 Q. Let me just give you a minute to take a look at
15 it.

16 Have you ever seen this before?

17 A. Have I ever seen this?

18 MR. SCHWARZ: Seen the drawing.

19 THE WITNESS: No.

20 BY MS. WANEMAKER:

21 Q. And like I said, I know it's not to scale, but
22 does this drawing accurately reflect the layout
23 of your home as it was in January of 2020?

1 A. Just a little sketchy on the bottom part there.
2 I can't see that real well. Like between the
3 kitchen and the bedroom, what have they got
4 there?

5 Q. Bathroom.

6 A. Oh, okay. Yup, that looks like it.

7 Q. And so was the master bedroom that you and Chuck
8 shared at the bottom rather than -- it was at the
9 bottom, correct, in the picture?

10 A. The spare bedroom is at the top.

11 Q. Did you have a fire extinguisher in that house in
12 January of 2020?

13 A. I had three fire extinguishers in my house.

14 Q. Where were they?

15 A. I had one in the kitchen -- or, two in the
16 kitchen, actually. One in the back bedroom.
17 Yeah. One in the back bedroom, spare bedroom.

18 Q. And when you say the back or the spare bedroom,
19 are you referring to the bedroom --

20 A. Yes.

21 Q. -- on top? Thank you.

22 Can you take me through the route that you
23 took upon waking up on January 24th of 2020,

1 using this diagram?

2 A. Yeah. Chuck and I were sleeping in that lower --
3 that bedroom on the lower side. I opened the
4 door and silenced the fire alarm that's
5 immediately outside on the wall there because I
6 didn't want it frightening him. I could smell
7 smoke. I knew there was something going on,
8 hoping it was just the furnace. Maybe it had
9 malfunctioned and was putting out smoke or
10 something, and I could shut that down.

11 But I went back through the kitchen -- past
12 that bathroom, through the kitchen, and then I
13 got into the living room. When I stepped to the
14 right to go down that hall, I could see the glow
15 of the fire coming from that room where the
16 laptop was.

17 I immediately backtracked to the kitchen,
18 grabbed a fire extinguisher and hoped that when I
19 got to the doorway I would be able to take care
20 of it, but when I got there, it was already
21 putting out fireballs, whatever they call them,
22 from the battery pack apparently, sending them up
23 to the ceiling. It was catching on fire and

1 dropping from the ceiling, so I couldn't go in.

2 Q. Did you attempt to use the fire extinguisher?

3 A. No, because it was already flying too much and
4 wasn't -- I'm not a professional firefighter and
5 I figured, if anything, I would probably spread
6 that flame because it was already out of control
7 for an individual to handle.

8 Q. And then what did you do next?

9 A. I came back through, put my fire extinguisher, if
10 I recall, on top of the counter in the kitchen.
11 I had told Chuck to get himself into his
12 wheelchair, which normally he would do, and came
13 back to check on him to get him. We were going
14 to go out through that laundry room that's on the
15 lower -- to the elevator outside there. That
16 would take me out to the garage, to the lift, the
17 elevator. Go down, get into the car, and get the
18 heck out of there and call the emergency
19 services. But Chuck had -- if he had got up, he
20 had fallen. And unfortunately, I was getting
21 enough smoke that I couldn't do the job of
22 lifting him out of there to get him into the
23 chair.

1 Q. Was there a wheelchair in the bedroom?

2 A. Yes. I always kept it adjacent to the bed, about
3 center, so that when he stood, he would be able
4 to pivot himself into that wheelchair.

5 Q. Was the wheelchair in that location when you
6 entered the room after putting the fire
7 extinguisher in the kitchen?

8 A. It was in that position when I put him to bed.
9 It was there overnight always.

10 Q. And where was it when you entered the room after
11 putting the fire extinguisher onto the counter?

12 A. It was still sitting where it had been positioned
13 for him to get in.

14 Q. It had not been moved, correct?

15 A. It had not been moved.

16 Q. And when you returned to that room, that bedroom,
17 where was Chuck?

18 A. He had fallen. He was on the floor.

19 Q. Did you make any efforts to get him up off the
20 floor?

21 A. Of course.

22 Q. How?

23 A. By pulling, lifting. I actually had one of the

1 belts that the aides have given me around his
2 upper torso area to try to lift him with, but he
3 wasn't -- he was giving me a blank stare saying
4 nothing. I don't know if he was in shock,
5 already suffering from the smoke, but he was
6 making no effort to move, and I alone could not
7 pick up a two hundred fourteen pound man.

8 Q. What did you do at that point?

9 A. Well, at that point I had to leave the room. I
10 actually dropped to the floor because the air was
11 better down there, crawled out to the laundry
12 room. Then I had to get up because I thought,
13 well, I got to get the car out if I'm going to
14 use the OnStar. And I was fumbling in the smoke
15 to find the fob on the key rack, dropped them.
16 They all fell off onto a little bench underneath.
17 So I had to find that by feel.

18 And I had to crawl out to the elevator. Got
19 myself down, went out to the garage, started the
20 car, pulled it out into the driveway. It would
21 not connect to OnStar in my driveway, which I
22 found is typical. I'm pretty upset about that
23 with them. I repositioned the car in three

1 different positions to try to get it to -- it
2 would not. I ended up driving down the road
3 probably a mile and a half before it finally
4 connected.

5 Q. Can you describe to me, using this diagram on
6 Exhibit 6, where is the elevator?

7 A. Where is what?

8 Q. The elevator.

9 A. As you come out into that garage or utility room.
10 In the garage, when you open the garage door, the
11 elevator is immediately there.

12 Q. Did you exit through the door that I'm circling
13 with my mouse, which goes between what looks like
14 the kitchen and laundry?

15 A. No. There's no door there. There's a doorway.
16 There's a door that goes out into the garage from
17 the laundry room. I exited through that door
18 into the garage onto the elevator, and that took
19 me down to the garage floor. There, I got my
20 car.

21 MR. SCHWARZ: It's not depicted in the diagram,
22 Jackie.

23 MS. WANEMAKER: Thank you.

1 BY MS. WANEMAKER:

2 Q. I just have a couple follow-up questions about
3 some of the things that you just said. Please
4 let me know if you want to take a break.

5 A. I'm getting close.

6 Q. Do you want to take one now?

7 A. Well, if you're going to be a few more minutes,
8 yeah.

9 (Whereupon, a short recess was then taken.)
10

11 RE-EXAMINATION BY MS. MASTRIANO:
12

13 Q. I've gotten permission from Jackie to ask a
14 couple questions, but you're on mute so I won't
15 be able to hear the answers.

16 MR. SCHWARZ: Sorry.

17 BY MS. MASTRIANO:

18 Q. Ms. Marcellin, I know this must be very difficult
19 for you, and I'm sorry. You know, this is our
20 job, we have to go and do this. But before -- I
21 don't want you to have to go over the traumatic
22 part of it too much.

23 So I want to go backwards because I have a

1 couple questions of my own about the laptop, and
2 then I'll switch back over and let counsel take
3 it moving forward so we don't have to repeat
4 everything.

5 Just kind of switching gears, I just kind of
6 want to go back to the computers that you owned.
7 First question -- this may have been answered.
8 I'm trying my best not to repeat stuff.

9 In terms of the 2015 laptop, did you ever
10 have any issues with it prior to the fire?

11 A. Well, 2015 is the one that was giving me the
12 problem with upgrading to the Windows 8.

13 Q. Okay. You did say that. In terms of -- I think
14 you said that, correct me if I'm wrong, that
15 eventually you couldn't upgrade to the next
16 Windows; is that correct? On the 2015 laptop.

17 A. The what?

18 Q. On the 2015 laptop, were you eventually able to
19 upgrade to the next version of Windows?

20 A. No.

21 Q. I think counsel might have asked you this, but on
22 that 2015 laptop, did you ever feel it getting
23 hot at any period?

1 A. No, never did.

2 Q. Did you ever report to Staples any issues with
3 the laptop prior to the date of the incident?

4 A. No.

5 Q. I previously asked you how you bought the laptop
6 in 2015, and you told me it was because you
7 needed it for travel, right? Is that correct?

8 A. I didn't catch the last thing. You thought it
9 was how?

10 Q. I'm sorry. So earlier I asked you how do you
11 know when you bought the 2015 laptop, and you
12 said 2015 because it's before we traveled,
13 correct?

14 A. Yes.

15 Q. When was the first time that you traveled after
16 purchasing the subject laptop?

17 A. I'm trying to remember the place that I told you
18 that I went.

19 MR. SCHWARZ: Atlantic City?

20 THE WITNESS: Atlantic City, yes.

21 BY MS. MASTRIANO:

22 Q. Atlantic City?

23 A. Yes.

1 Q. And when was that?

2 A. I don't recall exactly, but I would say probably
3 within six weeks of having the laptop.

4 MR. SCHWARZ: I think she said previously sometime in
5 the fall of 2015.

6 MS. MASTRIANO: I got it, Steve. And I was going to
7 ask her a question about that too.

8 BY MS. MASTRIANO:

9 Q. You think maybe within six weeks of buying it.
10 My question is, you thought it was in the fall.
11 Why did you think it was the fall versus the
12 summer or the spring?

13 A. Because it was cooling down, getting cooler, you
14 know.

15 Q. You remember the weather. Is that what you're
16 saying?

17 A. Yeah. It was just more weather related that I
18 was, you know --

19 Q. Because it was --

20 A. -- but back then, you don't know, it bounces
21 around anymore.

22 Q. I'm sorry. I missed the last thing you said.

23 But when it was cooling down, is it the

1 cooling down from summer or moving into winter?

2 A. Well, yeah, cooling down from what summer would
3 have been. It wasn't eighty degrees, that's for
4 sure.

5 Q. There's a bunch of computers and I want to make
6 sure I got it straight since I'm listening in
7 versus questioning. So this is what I've got.
8 At the time of the incident you had a 1990 Compaq
9 laptop; is that correct?

10 A. At what point in time?

11 Q. At the time of the incident -- time of the
12 accident, you had -- I'm trying to see which
13 computers you had in the house. I believe you
14 said that you had a 1990 Compaq laptop; is that
15 correct?

16 A. Yes, but it wasn't being used.

17 MR. SCHWARZ: Right. She just wants to know what is
18 in the house.

19 THE WITNESS: It was in the house, yeah.

20 BY MS. MASTRIANO:

21 Q. I just want to know what is in the house.

22 A. It was in the house in the closet.

23 Q. Then you have the 2010 desktop, correct?

1 A. Yes.

2 Q. And you bought that from Staples. Is that what
3 you said?

4 A. Yes, I did.

5 Q. And what brand was that?

6 A. That was an HP.

7 Q. Then you have what we've been referring to as the
8 2015 laptop, correct?

9 A. I thought that's what you just talked about.

10 Q. I mentioned two. One is the 1990 Compaq laptop,
11 correct? You had that at the time of the
12 incident?

13 A. Yes.

14 Q. And you had a 2010 desktop, HP desktop; is that
15 correct?

16 MR. SCHWARZ: Not in the house, just prior to that.

17 THE WITNESS: The only thing I have of that, that I
18 recall, was the monitor of the desktop
19 three-piece unit that was still in the house. It
20 showed that in that cabinet, in the back of the
21 cabinet.

22 BY MS. MASTRIANO:

23 Q. So the monitor was in that cabinet, but we also

1 saw a keyboard and a CPU, a hard drive. Are
2 those to that 2010 --

3 A. I don't think that was a CPU. I had already
4 gotten rid of the CPU. I just don't know what
5 that was sitting there.

6 Q. So you're not sure what it was, but if it was a
7 CPU, do you know where -- what it belonged to?

8 MR. SCHWARZ: She doesn't believe it was a CPU, so I
9 don't think she can answer that question. So I
10 object to the question.

11 MS. MASTRIANO: You can object to form.

12 BY MS. MASTRIANO:

13 Q. My understanding was that you said that you
14 didn't know what it was, not that it wasn't a
15 CPU.

16 A. No. I don't recall what was sitting down there,
17 but it was not a CPU. I disposed of that before
18 I bought the laptop to use it then.

19 Q. So let me see. We've got a 1990 Compaq laptop
20 that you said was, at the time of incident, in
21 the closet; is that correct?

22 A. In the closet.

23 Q. What color was the 1990 Compaq laptop?

1 A. The color of the 1990?

2 Q. Yes.

3 A. Probably gray or silver.

4 Q. Do you know for sure?

5 A. No, I don't.

6 Q. Do you know if it was a dark carry bag?

7 A. Well, it was a gray. I would say a medium gray
8 carry bag.

9 Q. Okay. And what color was the actual Compaq
10 computer?

11 A. In my recollection, silver, but not positive.

12 Q. Then we got a 2010 desktop, but my understanding
13 is you're saying that that wasn't in the house
14 except for the monitor; is that correct?

15 A. That is the monitor, that I'm aware of.

16 Q. Then we have what we've been referring to as the
17 2015 laptop, correct?

18 A. Yes.

19 Q. And then we have the 2019 HP laptop that you
20 bought from QVC, correct?

21 A. Yes.

22 Q. Did Charles have any computers?

23 A. No.

1 Q. So at the time of the incident, am I missing any
2 other computers? Were there any other computers
3 in the house prior to the incident?

4 A. Well, you skipped over the 2019 one that
5 disappeared -- melted down, sat on the sewing
6 table, that was around Christmas.

7 Q. Right. The 2019 laptop and you got that --

8 A. Okay. All right.

9 Q. And you got that from QVC you said, right?

10 A. Yes.

11 Q. So then we saw in July of 2015 that you purchased
12 something from -- I don't have it. From Factory
13 Outlet?

14 A. That sixteen dollar purchase from the Factory
15 Outlet or something.

16 Q. Ms. Marcellin, this is what's confusing me. Is
17 it your testimony here today that that
18 replacement battery that you bought in July of
19 2015, you were putting into a 1990 Compaq laptop?

20 A. No. Not really contending that because I have no
21 idea what that battery order or that order was
22 from that company for sixteen dollars and
23 something. Not even sure it was a battery. Does

1 it say it was a battery?

2 Q. You did, because you said you had to look at the
3 model number to see what lined up with the 1990s
4 Compaq.

5 MR. SCHWARZ: Are you saying that was her testimony?

6 MS. MASTRIANO: Yes, prior testimony.

7 MR. SCHWARZ: No. I object. I don't believe that
8 was her prior testimony. We were looking at the
9 date.

10 BY MS. MASTRIANO:

11 Q. Still my original question, Ms. Marcellin, did
12 you buy a battery -- whatever you bought from
13 Factory Outlet in 2015, which --

14 A. But I'm not sure what I bought for sixteen
15 dollars and some cents. It was Factory Outlet,
16 but they might have sold me something else that
17 was not a battery. I don't know. I have to look
18 the company up and see what else they sell.

19 Q. I totally understand you. You're not sure what
20 it is. I get it. But if you bought an accessory
21 in July of 2015 for a computer, you believe that
22 what you bought that for was your 1990 laptop?

23 MR. SCHWARZ: She doesn't know what she bought it

1 for.

2 MS. MASTRIANO: I need you to stop testifying,
3 please. That's a speaking objection.

4 MR. SCHWARZ: Well, you keep repeating the same
5 questions over and over.

6 MS. MASTRIANO: You are allowed to have a form
7 objection. Please let your witness answer.

8 THE WITNESS: I could have ordered that battery, if
9 it was a battery, for someone else in my house,
10 but I wouldn't remember if I did back at that
11 point.

12 BY MS. MASTRIANO:

13 Q. And who else was in your household?

14 A. What?

15 Q. Who else was in your household?

16 A. There was nobody in my household. A member of my
17 family, not household.

18 Q. Do you remember buying a battery for a family
19 member?

20 A. I do not remember doing that.

21 Q. Have you ever bought a battery for a family
22 member in the past?

23 A. I have, actually, but it was after the fire.

1 Q. Okay. When was that?

2 A. In the spring of 2020 when I went to stay with my
3 son and daughter-in-law after the fire. They had
4 a computer that was ancient, kept me awake at
5 night worrying about a battery. I ordered them a
6 battery. But it was not a Hewlett Packard. It
7 was a brand that wasn't sold anymore except as a
8 refurbished unit, and yeah, I was concerned. So
9 I bought a replacement battery for their laptop.

10 Q. Okay. So prior to the incident, had you ever
11 bought a family member any type of computer
12 accessory?

13 A. Not that I recall, but --

14 Q. You can correct me if I'm wrong, but what I'm
15 understanding your testimony to be is you bought
16 something in July 2015 from the Factory Outlet,
17 correct?

18 A. Yes.

19 Q. You don't know if that was a battery you're
20 saying, correct?

21 A. Not positively. They may sell other things that
22 I'm unaware of.

23 Q. And you're saying that you might have bought it

1 for your household, but you don't remember ever
2 buying --

3 A. Not for my household. For a family member.

4 Q. But you don't ever remember buying something for
5 a family member -- a computer accessory for a
6 family member prior to the incident, correct?

7 A. Not to that point, no.

8 Q. In fact, I thought you said that you purchased
9 the battery, you can correct me if I'm wrong --

10 A. I purchased the battery for the Compaq, but I do
11 not remember where I purchased it.

12 Q. Okay. So you did purchase a battery for the
13 Compaq, correct?

14 A. Yes.

15 Q. And you did purchase that in 2015?

16 A. I just don't recall.

17 Q. Okay. So you remember buying a battery and
18 replacing that battery. Do you remember when
19 that was?

20 A. No, I do not remember the date of buying the
21 replacement battery for the Compaq. And that is
22 the only replacement battery I've ever bought for
23 my own use.

1 Q. Do you remember if you bought that battery prior
2 to traveling?

3 A. No, I don't recall. I do not recall the date.

4 Q. I mean, you're saying you don't remember when you
5 bought the battery. Do you know when it was in
6 relation to the -- did you buy a battery for that
7 Compaq laptop within a year of the fire or more
8 than one year?

9 MR. SCHWARZ: A year or two to what?

10 MS. MASTRIANO: To the fire.

11 MR. SCHWARZ: Of 2020?

12 MS. MASTRIANO: Correct.

13 THE WITNESS: It would have been long before that,
14 but couldn't tell you exactly when.

15 BY MS. MASTRIANO:

16 Q. Do you know where you purchased the replacement
17 battery?

18 A. No, I do not.

19 Q. And when you say a long time, do you have a
20 specific memory of purchasing the replacement
21 battery?

22 A. I definitely remember purchasing the battery --
23 ordering the battery, but I do not remember from

1 where or at what point.

2 Q. Do you remember if it was online or if it was in
3 person?

4 A. No. It would have had to have been online.

5 Q. Do you remember where from? I'm sorry. I'm not
6 going to ask that.

7 You said you bought a replacement battery
8 online, right? But you're saying you don't
9 remember where from?

10 A. No.

11 Q. Is it possible that what you bought from Factory
12 Outlet was a replacement battery?

13 A. I suppose it's possible, but I can't verify that.

14 Q. Correct me if I'm wrong, but I thought that you
15 wanted to replace the battery in your 1990 Compaq
16 because it was running slow. Do you remember
17 that testimony?

18 A. Yes, I remember that.

19 Q. What was running slow in the Compaq?

20 A. Downloading things to the screen. Anything that
21 I put from one thing to another, it just -- it
22 was like in slow motion, but that could have been
23 other things that were going on that weren't even

1 the fault of the battery. I don't know. I'm not
2 a tech.

3 Q. Right. Me either. But so why did you think it
4 needed a new battery for it?

5 A. I figured that if it were the battery, it would
6 be the cheapest fix.

7 Q. Okay. I know that your 2015 laptop was running
8 slow. Correct?

9 A. Yes.

10 Q. Did you think you needed to replace the battery
11 on the 2015 laptop to get it to go faster?

12 A. I have not tried, because I have learned a long
13 time ago you don't flip over anything that's
14 mechanical and remove. I don't know how many
15 screws from the back, which is obviously what
16 you'd have to do.

17 Q. But you felt comfortable replacing the battery on
18 the Compaq?

19 A. Yes, because it's just like your TV battery
20 replacement.

21 Q. If you had a 1990 Compaq laptop, you had a 2010
22 desktop, and you had a 2015 laptop, why are you
23 using the 1990s laptop --

1 A. Because I loved my Compaq laptop. Like I said,
2 the keyboard for me was much more user friendly.
3 It wasn't as expensive compared to anything I've
4 ever bought in a laptop, even to this day.
5 Better quality machine. But then they went out
6 of business. HP took them over actually from
7 what I understand.

8 Q. So had you been using your Compaq laptop from the
9 1990s right up until the time of the accident?

10 A. No. It had been stored.

11 Q. But if you liked it better, why was it stored?

12 A. Because it was slow, it wasn't functioning as
13 well. I think I've repeated that about three
14 times now.

15 Q. We have. But my question is, if it was slow, why
16 didn't you use one of your other computers? Why
17 would you buy a replacement battery for a 1990 --

18 A. I preferred the Compaq to HP, to anything else
19 that was out there as far as the sound of the
20 keyboard, touch of the keyboard. Why are you
21 arguing with me about what I like?

22 MR. SCHWARZ: You can't ask questions.

23 BY MS. MASTRIANO:

1 Q. I'm sorry. I'm not trying to argue with you.
2 I'm just trying to get clarity. I definitely am
3 not trying to argue with you. I'm just here to
4 ask you some questions.

5 You're saying that you liked the Compaq,
6 that you preferred the Compaq, but then you
7 stored it for twenty-five years. And then you
8 brought it out before the fire in July of 2015
9 and bought it a replacement battery.

10 MR. SCHWARZ: I object to that question. That's not
11 what her testimony was.

12 MS. MASTRIANO: You're right, Steve. I'm sorry.

13 BY MS. MASTRIANO:

14 Q. So let me rephrase. So when is the first time --
15 you put the 1990s Compaq into storage, correct?

16 A. Yes.

17 Q. When is the first time -- when did you put it
18 into storage?

19 A. I could not give you a definite date of when I
20 put that into the closet.

21 Q. So if you got a desktop in 2010, did you put it
22 into the closet before or after you got your
23 desktop?

1 A. That was already in the closet before I got the
2 desktop.

3 Q. So when is the first time that you took it out of
4 the closet?

5 A. I do not recall.

6 Q. Do you know if it was in 2015?

7 A. No. I don't remember.

8 Q. So you put it into storage. You believe it was
9 in storage before 2010, and you don't know when
10 you took it out of storage. Is that your
11 testimony?

12 A. Yes. I don't recall.

13 Q. Now, how did you find a battery for a 1990s
14 Compaq? What was your process?

15 A. Well, it had to be online because there was no
16 local sale of --

17 Q. That's what I was wondering, because it's out of
18 business I believe. Right?

19 A. Even today in my location I cannot buy a
20 replacement battery for a computer, laptop.

21 Q. So how did you find a battery for that 1990
22 Compaq?

23 A. Order it online I'm certain, if I did. Like I

1 said, I don't even recall ordering that,
2 especially at that price point.

3 Q. And how did you know which battery to get?

4 A. You give them the model number of your product if
5 you're ordering something online, and they match
6 it up with what goes in it. If I did that at
7 all.

8 Q. Where was the model number on the 1990s Compaq?

9 A. Excuse me?

10 Q. Where was the model number on the 1990s Compaq?

11 A. I do not recall.

12 Q. So your testimony is that you went somewhere
13 online, not sure where, and you purchased a
14 replacement battery for the 1990 Compaq based on
15 the model number; is that correct?

16 A. If that's indeed what I actually ordered there.

17 MR. SCHWARZ: Well, we're not talking about the form.
18 We're just talking about general.

19 THE WITNESS: Okay. Yeah.

20 MS. MASTRIANO: Angela, can you just please read the
21 question back?

22 (Whereupon, the above-requested question was
23 then read back by the reporter.)

1 THE WITNESS: Yes.

2 BY MS. MASTRIANO:

3 Q. You went somewhere online. Do you remember when
4 you received that replacement battery?

5 A. No, I do not.

6 Q. Do you remember what you did with the replacement
7 battery once you received it?

8 A. Yes. I installed it in the Compaq laptop.

9 Q. Do you recall receiving that battery in the mail,
10 or did you have to go to a store to pick it up?

11 A. I don't remember.

12 Q. I think you said on the night of the incident
13 that you were downloading the Norton AntiVirus to
14 the 2015 laptop; is that correct?

15 A. Doing a virus scan.

16 Q. Okay. When was the last time that you had done a
17 virus scan on the 2015 laptop?

18 A. Couldn't tell you that, but it was on a pretty
19 regular basis. At least once a week that would
20 pop up for me.

21 Q. For how many years did it pop up once a week?

22 A. For as long as I owned it I would say. Until it
23 expired.

1 Q. And do you know how long a virus scan takes?

2 A. I put the brief scan on it usually and, like I
3 said, within two or three minutes, you know, shut
4 it down.

5 Q. You're saying that every other night after --
6 whenever you had done a Norton scan before, you
7 had always shut down the computer, correct?

8 A. Yes. Shut it down, unplugged it, wound the cord
9 around it, put it way back up in the armoire.

10 Q. And then on the night that we're talking about
11 here, you did the virus scan, but then you left
12 the computer open; is that correct?

13 A. Yes. It was late. I was exhausted and I went to
14 bed thinking that when I got up in the middle of
15 the night to either go to the bathroom myself or
16 take Chuck to the bathroom, that I could go
17 unplug it. But we slept through the night.

18 Q. Who is Chunk?

19 A. Pardon?

20 Q. Who is Chunk?

21 A. Charles.

22 Q. Oh, Chuck. I'm so sorry. I thought you had a
23 pet. It's really loud in my office. I'm sorry.

1 You said that you bought the 2019 laptop
2 from QVC; is that correct?

3 A. Yes.

4 Q. Why did you buy it from QVC?

5 A. Because at the time it was a COVID thing, going
6 into the COVID situation and everybody was -- no
7 one was out there selling computers because kids
8 were all using them and office people to do
9 remote work.

10 Q. Other than buying the 2019 computer from QVC, did
11 you purchase any other computer or computer
12 accessories from QVC at any time?

13 A. Well, yes, after the fire in 2020 --

14 Q. I'm sorry -- yes.

15 A. -- it took months in order to order a new one
16 because the one I received for Christmas melted
17 on that sewing table of course.

18 Q. Okay.

19 MS. WANEMAKER: I'm sorry. Angela, can you read that
20 back for me?

21 (Whereupon, the above-requested answer was
22 then read back by the reporter.)

23 BY MS. MASTRIANO:

1 Q. So I understand that you bought things after the
2 fire from QVC for the computer. Prior to the
3 fire, had you -- other than this 2019 laptop, had
4 you bought anything else from QVC that was either
5 a computer or a computer accessory?

6 A. No, not to my knowledge or remember.

7 Q. Okay. So you replaced the battery in the Surface
8 laptop, correct?

9 MR. SCHWARZ: Object to the form of the question.
10 You're saying she replaced the battery in the
11 2015? She never testified to that.

12 MS. MASTRIANO: I'm sorry, Steve. I couldn't hear
13 what you said.

14 MR. SCHWARZ: Did you say that she replaced the
15 battery in the subject laptop?

16 MS. MASTRIANO: No. In the Surface.

17 MR. SCHWARZ: In the Surface?

18 MS. MASTRIANO: I'm saying -- Compaq. Compaq.

19 MR. SCHWARZ: Okay.

20 MS. MASTRIANO: I'll replace the word Surface.
21 Sorry.

22 BY MS. MASTRIANO:

23 Q. So you replaced the battery in the Compaq laptop,

1 correct?

2 A. Yes.

3 Q. What did you do with the Compaq laptop after
4 that?

5 A. I used it a few times, but it didn't solve the
6 slow situation, which I had hoped it would. It
7 ended up going into the bag, the gray bag, and
8 being stored in my closet.

9 Q. Did you have try to put different software on it
10 to make it faster or --

11 A. I would have to take that to a tech or someone
12 who could do that kind of stuff. I was trying to
13 find an inexpensive way to be able to keep and
14 use my Compaq. It just -- that plan just didn't
15 work out for me.

16 Q. So you bought a battery for the Compaq and you're
17 saying that it still had issues, so you put it
18 away, correct?

19 A. Put it away.

20 Q. How many times would you say you used it before
21 you put it away?

22 A. Maybe about three.

23 Q. And after you put it away in the closet, is that

1 where it stayed until the fire?

2 A. Yes.

3 Q. How about for the 2015 laptop? I heard you say
4 before that when you left, you left with the
5 laptop. Was the laptop in the carry bag? From
6 Staples in 2015.

7 A. What kind of carry bag are you referring to?

8 Q. Did you walk out with a computer or was it in a
9 computer carry bag?

10 A. No. It was in nothing.

11 Q. It was in nothing?

12 A. No container.

13 Q. No container and no cover for it?

14 A. No.

15 Q. Did you buy a cover that day for it?

16 A. No.

17 Q. Did you ever have a cover for the 2015 laptop?

18 A. No, I don't believe so.

19 Q. When you walked out of Staples, you had a power
20 cord; is that correct?

21 A. Yes, I did.

22 Q. Did you have a mouse?

23 A. Yes.

1 Q. How did you carry all that stuff out, did you
2 have a bag or did you carry it in your arms?

3 A. In my arms.

4 Q. Was Charles with you?

5 A. I don't recall.

6 Q. Did somebody help you bring it out to the car?

7 A. No.

8 Q. Do you remember what Staples salesman -- do you
9 remember what time of day it was that you talked
10 to the Staples salesman?

11 A. Early afternoon, approximately.

12 Q. And you said you were discussing which laptop to
13 buy with him?

14 A. Yes.

15 Q. And why did he suggest the laptop that you
16 eventually ended up buying?

17 A. We had a conversation about what I use my laptop
18 for, and I think the only thing I told him was
19 that I was not a computer gamer. I couldn't make
20 any comments about what the others were. And my
21 question to him was which one do you think is the
22 better laptop for me, and he immediately chose
23 the model that I ended up taking home, without

1 any explanation why it was better for me. But of
2 course it saved me money, so I said fine.

3 Q. So obviously he was a male. Can you describe him
4 other than that?

5 A. I would say a male. Not six foot tall. Maybe
6 five-eight, approximately. Dark hair, very dark
7 hair, like black. I don't remember the color of
8 his eyes, but I would say offhand brown, but not
9 positive on that. Very friendly, very courteous.

10 Q. What about the age, about what age?

11 A. What age? I would have put him between probably
12 twenty-five to thirty-two, approximately. Best I
13 could do.

14 Q. Did he have any tattoos or any other
15 distinguishing --

16 A. Not that I noticed, no.

17 Q. Was his skin color white or black?

18 A. He was white.

19 Q. So do you remember bringing the 2015 laptop with
20 you to Atlantic City?

21 A. Oh, yes.

22 Q. Did you take pictures in Atlantic City?

23 A. Not that I recall.

1 MS. MASTRIANO: Counsel, can you put Exhibit 3 back
2 up? I believe it was the room with the fire and
3 you asked about the sconce.

4 MS. WANEMAKER: I can pull it up, yes.

5 BY MS. MASTRIANO:

6 Q. While we're waiting for her to pull that up, Ms.
7 Marcellin, let me ask you, do you know that
8 off-market batteries should not be used in
9 laptops?

10 A. I guess they shouldn't be selling them. No, I
11 didn't know that.

12 Q. We've been talking a lot obviously about the 2015
13 laptop. Let me ask you, for any other, other
14 than the 1990s Compaq, have you ever bought any
15 other replacement battery?

16 A. The only one I told you about was after the fire.

17 Q. Right. Correct. Before the fire I mean.

18 A. Otherwise, nothing.

19 Q. Nothing before the fire?

20 A. No.

21 Q. How about for a cord?

22 A. No.

23 Q. So prior to the fire, you had never purchased an

1 additional cord for any of the computers?

2 A. No.

3 Q. So we're here in Exhibit 3 and counsel asked you
4 earlier, if you look on the right-hand side of
5 the picture there's that -- she pointed to it
6 before. It's hard to see. Like a sconce or
7 something. It's hard to tell what that is. Can
8 you tell me what that is?

9 A. I really don't remember it being there, but if it
10 were anything, it was something that was sold to
11 me from Home Interiors as a decorative wall
12 thing. It was never used for anything. It was
13 just decorative.

14 Q. Ms. Marcellin, do you ever remember being advised
15 not to leave your laptop charging overnight?

16 A. No, never.

17 Q. At the time of the incident, did you know that
18 you shouldn't charge your laptop overnight?

19 A. No.

20 Q. But at the time of the incident, you had already
21 read the manual for the 2019 laptop, correct?

22 A. Probably. Not positive if I read it yet, but --

23 Q. Whenever you read it, do you remember reading

1 that you shouldn't put off-market batteries into
2 a computer?

3 A. I don't recall what I read in that one, no.

4 Q. Do you ever remember reading that you shouldn't
5 use cords that don't come with the laptop?

6 A. Use what?

7 Q. Alternate cords, power cords with the laptop.

8 A. It may have said that, but it didn't apply to me
9 anyway.

10 Q. My question is, do you remember reading it in the
11 manual for the 2019 laptop?

12 A. Do not recall.

13 MS. MASTRIANO: I'm finished for now.

14

15 RE-EXAMINATION BY MS. WANEMAKER:

16

17 Q. I'm going to jump around a little bit and fill in
18 things.

19 Ms. Marcellin, with respect to the fire
20 extinguishers, you said that you had three in the
21 house at the time of incident; is that correct?

22 A. Repeat that.

23 Q. Sure. You said that you had three fire

1 extinguishers in your home at the time?

2 A. Yes.

3 Q. Had you ever used any of them before?

4 A. No.

5 Q. You mentioned hearing a smoke alarm. Is that
6 what woke you up that morning?

7 A. Yes, definitely.

8 Q. Where was the smoke alarm located?

9 A. Where what?

10 MR. SCHWARZ: Where was it located?

11 THE WITNESS: Located in the hallway right outside
12 the room where the fire was originating.

13 BY MS. WANEMAKER:

14 Q. And was it battery operated or connected to
15 wires?

16 A. No, it was a wired-in. It was a wired-in.

17 Q. And was that somehow connected to emergency
18 services where 911 would be notified when it went
19 off, if it went off?

20 A. Didn't know those existed.

21 Q. So no? Is that your answer?

22 A. No.

23 Q. When was that smoke alarm last serviced or

1 maintained?

2 A. Well, as far as maintenance, the only maintenance
3 you really needed to do on that, because it
4 wasn't battery, it was wired, was to take care of
5 the dust problem that might be collected on it or
6 in it. And that happened at least twice a year.

7 Q. Did you have particular times of the year when
8 you would do that? For example --

9 A. Spring cleaning of course. Thanksgiving you're
10 dusting everything.

11 Q. Did you have any other smoke alarms in the house?

12 A. Yes. There was one that was battery operated
13 just outside the bedroom where we were sleeping.

14 Q. Did that one go off?

15 A. Yes, it did, but it was shortly after the one
16 near the fire.

17 Q. Just so I understand, did they both go off?

18 A. They both went off, yes.

19 Q. And I believe you said you had turned off one of
20 them?

21 A. Yes. The one closest to that bedroom where Chuck
22 was because I thought that could be a possible
23 reason for him not responding, that he was

1 frightened.

2 Q. Did you turn off the other one as well?

3 A. No. There would have been no way to turn it off
4 unless I went and killed the breaker, which I did
5 not do.

6 Q. And when you returned to the bedroom, was Charles
7 responsive in any way?

8 A. No. No. He just was looking at me with both
9 eyes. No smile, no facial features, no comments,
10 nothing.

11 Q. He didn't say anything at that time, correct?

12 A. Not a word.

13 Q. But his eyes were open?

14 A. Yeah.

15 Q. Did you wear hearing aids back in January of
16 2020?

17 A. Did I wear hearing aids?

18 Q. Yes.

19 A. Chuck did. Charles wore hearing aids, not me.

20 Q. You didn't?

21 A. No.

22 Q. And I believe you said earlier that you used
23 eyeglasses or contact lenses?

1 A. For Charles?

2 Q. Back in January of 2020, did you wear any sort of
3 corrective lenses?

4 A. Yes. I wore contact lenses primarily.

5 Q. Would you take them out at night before going to
6 bed?

7 A. Oh, yes.

8 Q. Did you take them out before going to bed that
9 night?

10 A. Oh, yes.

11 Q. And were you able to either put them on or grab a
12 pair of glasses before you got into your vehicle?

13 A. No. I'm afraid I was a bad girl. I probably
14 drove down the road without any glasses, but --
15 actually, they told me I didn't need them for
16 driving. I wasn't at that point yet. Mostly I
17 was having trouble with reading smaller print and
18 stuff.

19 Q. Okay. And I know we talked a little bit about
20 the fire extinguisher, and you said that you did
21 not use it that night. Did you take any action
22 to try to put out the fire?

23 A. No. The insurance company told me I was wise not

1 to because that probably would have made it
2 worse.

3 Q. When you first exited your bedroom that night
4 upon hearing the smoke alarm, did you observe any
5 smoke at that time?

6 A. Yes. I could smell the smoke already.

7 Q. You could --

8 A. I couldn't see it, but I could smell it.

9 Q. So you couldn't see it at that time, but you
10 could smell it, correct?

11 A. Yes.

12 Q. When did you first see smoke?

13 A. As I -- I think as I entered the living room,
14 which is halfway through the house, I began to
15 see the smoke that was exiting the doorway on
16 that -- and saw the glow from the fire.

17 Q. Was the office door open or closed?

18 A. There was no door, no door in the office.

19 Q. And how low was the smoke layer in the living
20 room when you went there?

21 A. How low? I really do not recall.

22 Q. Was there any smoke in the hallway leading to the
23 office?

1 A. I would say yes, or I probably wouldn't have
2 smelled it there when I pulled the bedroom door
3 open.

4 Q. How low was the smoke layer in that hallway?

5 A. I don't think I even paid any attention to that.
6 Sorry.

7 Q. Did you observe any smoke inside the office?

8 A. What?

9 Q. Did you observe, did you see any smoke inside
10 the --

11 A. It was coming out the door into the hallway, yes.

12 Q. How low down did the smoke go from the office?

13 A. I would say probably couple of feet hovering over
14 me, you know, between me and the ceiling.

15 Q. And then -- on your way back to the bedroom, had
16 the smoke changed in any way?

17 A. It was rapidly getting worse.

18 Q. As you made your way back, was there a smoke
19 layer in the living room?

20 A. Yes.

21 Q. How low was that?

22 A. I don't recall. I was more involved in getting
23 to the other end of the house.

1 Q. Was there any smoke in the master bedroom when
2 you re-entered it at that time after putting the
3 fire extinguisher in the kitchen?

4 A. All I can remember is entering the room. I
5 cannot recall if there was smoke there.

6 Q. And when you entered the room, was Charles -- and
7 I apologize if you've already testified. I'm not
8 trying to belabor this. I know it's difficult.

9 Was he on the bed or on the floor when you
10 went back in at that time?

11 A. He was on the floor.

12 Q. Did he normally take his hearing aids out before
13 going to bed?

14 A. Oh, yeah. You take them out at night. You can't
15 sleep with them on, it would ring in your ears.

16 Q. Did you say anything to him when you entered the
17 bedroom at that time?

18 A. Yes. I was talking to him, but he was
19 unresponsive.

20 Q. Okay. What did you say to him?

21 A. I told him I have to get you up and get you in
22 the chair, and I tried to get him to offer me
23 help, assist him. Emotionless.

1 Q. And you got no response, correct?

2 A. Got no response.

3 Q. Did you try to physically put him into the
4 wheelchair?

5 A. I tried. A lot heavier than me and taller.

6 Q. Did you do anything else to try to help him? And
7 I understand you had to leave because of the
8 smoke. Did you do anything else to help him
9 prior to doing that?

10 A. There wasn't anything else I could do and still
11 get out and make the call as quickly as possible.

12 Q. When you went back in there, did you try to find
13 your cell phone?

14 A. Yes. Because it had disappeared of course.
15 Trying to -- quickly to find it. I assumed it
16 would still be there either covered up by the
17 bedcovers that we threw back or on the floor near
18 the bed. It ended up going across the room onto
19 the floor under a dresser.

20 Q. And you said that we threw back the bedcovers.
21 So did Charles wake up at all?

22 A. He did. When I told him I smell smoke, you need
23 to get up and get in your chair, the wheelchair

1 sitting by the bed. And so he threw back his
2 covers. I don't know which one of us threw the
3 phone out -- out of the bed area, but --

4 Q. Do you know if he heard the smoke alarm?

5 A. I really don't think he did because when I told
6 him I think we might have a fire, I smell smoke,
7 he said fire. And that was the last words I
8 heard out of him. That was it.

9 Q. Before you left, did you shut the master bedroom
10 door?

11 A. No, not all the way. It was cracked, I remember
12 that.

13 Q. Were his eyes open or closed when you left?

14 A. I'm sorry. I didn't hear you.

15 Q. I'm sorry. Were his eyes open or closed when you
16 left?

17 A. Open.

18 MR. SCHWARZ: I think she may need a break.

19 (Whereupon, a short recess was then taken.)

20 BY MS. WANEMAKER:

21 Q. Ms. Marcellin, do you know what time you woke up
22 that night?

23 A. The time I could remember as I walked through the

1 kitchen, I glanced at the clock and I thought it
2 I said twenty after four in the morning.

3 Q. Was the kitchen clock accurate? I know I keep
4 mine five minutes ahead so I'm not late.

5 A. Oh, no. Mine's pretty accurate.

6 Q. It was accurate?

7 A. Yeah, it was accurate.

8 Q. At any time while you were in the house that
9 night, did you lose consciousness?

10 A. No. I just -- again, having a very severe
11 problem after I was exiting the room with the
12 smoke overcoming me, and I dropped to the floor
13 and crawled out to the laundry room because it
14 was getting hard to get an easy breath.

15 Q. Did you experience any other symptoms at that
16 time?

17 A. No. I don't know. I probably was in panic mode.
18 Wouldn't remember if I did. I know I just had to
19 get out as quick as I could and get the call
20 made. Barefoot in the snow.

21 Q. You didn't have shoes on?

22 A. No. Didn't even realize it until I got out to
23 the car and already in it. All I had on was my

1 sleepwear and bare feet.

2 Q. Had you ever used the OnStar prior to that date?

3 A. Yes. It was a must when we traveled.

4 Q. Had you ever used it from your property before?

5 A. I don't think I've ever tried to use it from my
6 driveway before or my area, because I never had a
7 doubt it was going to work since I had a
8 satellite system from my phone and OnStar is
9 satellite. But it did not work.

10 Q. And you said you were about a mile and a half
11 away before it started to work?

12 A. Yeah.

13 Q. Do you know what time it was when that connection
14 was made?

15 A. No. I really don't. I'm sure it was very soon
16 after. I don't think I was doing the speed
17 limit.

18 Q. You think you were going faster?

19 A. Yeah.

20 Q. You just said something about travel and I don't
21 want to forget that. Sorry for jumping around a
22 little bit. When you took the trip to Atlantic
23 City, did you drive or fly there?

1 A. Oh, no, we drove.

2 Q. And did you stay in a hotel or with family,
3 friends, something else?

4 A. Trump Towers, actually.

5 Q. How long were you there?

6 A. I think maybe four days.

7 Q. And then you said you also I believe went to
8 Norfolk around that time?

9 A. Not around that time, but maybe months later.
10 Even the next year, possibly. We just traveled.
11 Maybe once a year we'd make a trip of some kind
12 to, you know, horse races, things like that.

13 Q. When was the last such trip?

14 A. Oh, wow. That's a tough one. My trips got
15 shorter.

16 Q. Why did they become shorter?

17 A. I was traveling far enough to need OnStar,
18 probably -- oh, they probably kind of ended about
19 close to five years before he passed. Basically,
20 it was harder because of his condition. He was
21 heading into the dementia and his sleep schedule
22 was getting more difficult to deal with also.

23 Q. After you connected with OnStar, what did you do?

1 A. Well, they told me to stay out of the building,
2 you know, and that emergency services were on the
3 way. I drove back up to the house, parked at the
4 top of the driveway a distance from the home, and
5 fought with myself desperately to not go back in
6 there.

7 Q. And did you in fact stay out?

8 A. Um-hum.

9 Q. At some point an emergency responder arrived,
10 correct?

11 A. Yes. Way too late.

12 Q. Who was the first to arrive?

13 A. Weston Mills Fire Department.

14 Q. Did you know anybody from that agency?

15 A. Not originally or at first. They put me in that
16 ambulance. They put me on oxygen and come to
17 find out the driver of the vehicle was my oldest
18 son's neighbor.

19 Q. It's a small town, right?

20 A. Yeah. Yeah.

21 Q. Did you make any other calls, connections, after
22 the OnStar connection and before Weston arrived?

23 A. No.

1 Q. I know we talked a little bit earlier about your
2 finding a key fob. Did you -- obviously you had
3 to take that to leave. Did you take anything
4 else out of the house before you left that night?

5 A. No. No.

6 MS. WANEMAKER: Can we take a five-minute break?

7 MR. SCHWARZ: Sure.

8 (Whereupon, a short recess was then taken.)

9 BY MS. WANEMAKER:

10 Q. You said you went in the ambulance and they gave
11 you oxygen, correct?

12 A. Yes.

13 Q. And did they take you to Olean General?

14 A. Yes, they did.

15 Q. Did you receive any treatment there?

16 A. I did, but then I -- checking the records, they
17 didn't document the burning of my throat,
18 tonsils. They had to swab the tonsils with
19 lidocaine and had me drinking like -- well, like
20 a medicine cup of the lidocaine because I could
21 hardly swallow.

22 Q. So you said you had some burning in your throat
23 when you got there; is that right?

1 A. It felt like it was on fire.

2 Q. What other symptoms did you have at that time?

3 A. Well, I really was just basically in shock.

4 They --

5 Q. Have you reviewed -- I'm so sorry to interrupt.

6 I thought you were done.

7 A. I just, you know -- I had some vertebrae popped
8 out of place in my back, but it was fine because
9 I didn't even realize that was going on until
10 probably a day or two later. My back was hurting
11 so bad and I didn't know why. You know, I just
12 thought it was muscles from trying to pull him,
13 lift him. Muscle strain, what have you.

14 Q. Have you reviewed the records from that visit?

15 A. I did. That's how I noticed they didn't document
16 the treatment, but that's not unusual for our
17 hospital. Everybody should review their record
18 from there, but you don't know that until you
19 find out they're making mistakes.

20 Q. Other than the burning of the throat that you
21 said wasn't documented, was there anything else
22 not documented?

23 A. Just they insisted I stayed with someone because

1 the amount of the smoke that I inhaled, that it
2 could result in seizures or something. They
3 didn't want me -- they wanted me to stay with a
4 family member for at least a couple of weeks.

5 Q. Did you get discharged that same day?

6 A. Yes.

7 Q. And where did you go upon leaving?

8 A. From the hospital?

9 Q. Yes.

10 A. To my son's house on Promise Land Road.

11 Q. And is that Alfred Junior?

12 A. Yes.

13 Q. How long did you stay with him?

14 A. Actually, I stayed with him until we got my
15 property back up and my home set again. I just
16 turned into kind of the housekeeper and part-time
17 cook because they're both working, you know.

18 Q. Do you know approximately how long that was? Was
19 it a matter of days, weeks, months, anything
20 else?

21 A. During COVID you couldn't get anything done in
22 days or weeks. It took six months to get the
23 house back up and liveable.

1 Q. And so did you return to Bells Brook after six
2 months?

3 A. Yup. Gave it some thought whether I wanted to go
4 back there or could handle going back there.
5 Found out I couldn't handle not going back there.

6 Q. Did you receive any assistance from the Red
7 Cross?

8 A. Yes, actually, I did. They contacted me and
9 surprised me. They met me in Burger King in
10 Olean and insisted on handing me money and, you
11 know, I thought -- I didn't really need that, but
12 they said this is part and parcel of what they do
13 because of the loss.

14 Q. What other assistance, if any, did the Red Cross
15 provide?

16 A. Well, because I had a place to stay and
17 everything, they didn't have to offer anything
18 beyond that.

19 Q. Do you recall how much money they gave you?

20 A. I really don't. I really don't at this point.

21 Q. And you said the house was repaired eventually?

22 A. Well, they didn't repair it. It was totally --
23 they had to rebuild. That's what took a long

1 time. It would have taken even longer if it
2 hadn't been for being able to hire a contractor
3 who was good friends with my son.

4 Q. Alfred?

5 A. Yes. And you weren't supposed to have a group of
6 people working together because of COVID, even
7 though it was outside. So they scurried around
8 it a little bit, managed to get it done in a
9 reasonable period of time.

10 Q. Did you have any out-of-pocket expenses relative
11 to that?

12 A. Well, most of it was covered other than my co-pay
13 for the medical and stuff like that. I don't
14 really recall laying down a lot of money for
15 anything special.

16 Q. Do you have insurance that covered the rebuilding
17 of your home?

18 A. Yes. Amazing, they did an amazing job with
19 coverage. I was so -- I helped them sell
20 insurance too, the Farmers Insurance Company,
21 because of the response I got with them.

22 Q. They did a good job?

23 A. Excellent.

1 Q. Did they replace all your furniture?

2 A. Well, no. I didn't have full replacement on the
3 contents, just on the home itself. There were
4 some expenses there, which I'm now -- I'm now
5 living a minimalist life because it's by choice.
6 At my age, why would I collect a lot of things I
7 don't need or especially want, you know. But it
8 was hard to buy a couch and what have you during
9 COVID. That took forever.

10 Q. Did you eventually get one?

11 A. Oh, yeah.

12 Q. What about the appliances, were the appliances
13 covered by the insurance?

14 A. No. No. Anything that was more than five years
15 old they devalued very badly. So you do get
16 minimal coverage on some things, the contents,
17 but it was very minimal.

18 Q. Did you have a deductible with respect to the
19 homeowners?

20 A. No. Amazing.

21 Q. Do you know how much the insurance company paid
22 to rebuild the house?

23 A. I should have been more diligent, but -- even my

1 son was amazed. It seemed like every month they
2 were depositing money into my account. So no, I
3 don't really.

4 Q. Did you make a claim for any personal property
5 that was destroyed in the fire?

6 A. Such as?

7 Q. Electronics, jewelry, anything, any personal
8 property.

9 A. Oh, yeah. Anything that goes with the -- or they
10 devalue things.

11 Q. Did you have to make a list of all the contents
12 that were in the home?

13 A. Pages and pages. But there again, my insurance
14 company was a charm, the guy. Thought of a
15 couple things that were not on my list and he
16 added them. Told him thank you. Who else would
17 do that, you know?

18 Q. That's nice. Did the list of the contents
19 include any electronics like the computers that
20 we've been talking about?

21 A. Probably did, but I didn't pay a lot of attention
22 to that, you know.

23 Q. Do you still have any of the records relative to

1 that insurance claim?

2 A. I'd have to look, but I might.

3 Q. Did you have to provide a statement to the
4 insurance company about the fire?

5 A. A statement? Other than the list you mean?

6 Q. Yes. Like more about the way it occurred.

7 A. Well, that was the one thing my son got upset
8 with them. When they first called, it was there
9 on-site a day or two after the fire, and we all
10 had to be there -- or, I had to be there. My son
11 was there of course. He jumped on the guy about
12 badgering me. That's why the conversation was on
13 here about badgering, but he backed off. But he
14 kept repeating things and getting very stern, and
15 I didn't -- I didn't hold up well under that
16 either.

17 Q. Do you know if they recorded any sort of
18 statement from you? Sometimes they'll do a tape
19 recording or audio recording of a statement.

20 A. I have a feeling they probably did, but I wasn't
21 aware. Didn't much care what they were doing.
22 Much care at all about anything at the moment.

23 Q. Sorry. I'm going to bounce around a little bit

1 again and I apologize. Going back to travel.
2 Other than the trips that we already talked about
3 that you and Charles took together, did Charles
4 take any trips or vacations in the last five
5 years?

6 MR. SCHWARZ: By himself.

7 THE WITNESS: Oh, by himself? No.

8 BY MS. WANEMAKER:

9 Q. By himself or with someone other than you.

10 A. Well, with his daughter he went to Texas, flew to
11 Texas.

12 Q. And I can ask her about that.

13 A. Yes.

14 Q. Any others that you can think of?

15 A. Traveling was a very difficult thing, so there
16 wasn't a lot with regards to that.

17 Q. And you talked about having -- you said a co-pay
18 relative to the Olean General visit. Do you
19 recall how much that was?

20 A. Well, at the time I probably -- I don't think my
21 hospital co-pay was probably more than
22 thirty-five dollars, even under Medicare, and the
23 rest was covered by my insurance.

1 Q. Did you have any other out-of-pocket expenses?

2 A. Well, yeah. They were like close to three months
3 later when my back didn't straighten up and I had
4 to start going to a chiropractor, getting advice
5 on physical therapy perhaps, what needed to be
6 done.

7 MS. WANEMAKER: Is there a claim for a back injury,
8 Steve? Is that part of the --

9 THE WITNESS: That was something that I was going to
10 have to talk to Steve about because Teresa --

11 MR. SCHWARZ: My legal assistant.

12 THE WITNESS: -- she had questioned about whether I
13 sent up a copy of my MRI that was done of my
14 back. And I said yeah, I did, but I couldn't
15 remember which paralegal or whatever it was that
16 it was sent to. And she was going to come back
17 to me and give me more documents to authorize
18 getting information on that, but she didn't.

19 So I don't know where that stands. There
20 was an MRI that was done that showed three discs
21 that were and are not positioned where they
22 should be positioned in my back, which are
23 causing me pressure and pain.

1 BY MS. WANEMAKER:

2 Q. Did you have some chiropractic treatment?

3 A. Yes, I did. Four different times over a few
4 weeks, which improved the situation. But the
5 pain, some of it -- some of the discs -- a couple
6 of them are pressing and can't get back to where
7 they belong without surgical stuff that I don't
8 want to get into on that, at my age especially.

9 Q. Have you seen anybody else relative to your back?

10 A. Well, my primary care physician of course, but --

11 Q. Did you have any follow-up treatment after Olean
12 General with respect to the complaints that you
13 had that night?

14 A. Well, yes, the chiropractic stuff of course, you
15 know. But other than that, no. The physical
16 therapy end of it came up with -- in order to
17 have them help me, I'd have to go about three
18 times a week. And they were going to use red
19 light therapy on my back. Well, such as I am, I
20 did some investigating. I found out I could buy
21 medical-grade red light therapy mats that I could
22 use myself and do the same thing. And they do
23 help a lot with relieving the pain, but it's not

1 a permanent cure is all. It's just for pain,
2 temporary pain relief.

3 Q. And where did you get that from?

4 A. I ordered that through Amazon.

5 MS. WANEMAKER: Off the record.

6 (Discussion off the record.)

7 BY MS. WANEMAKER:

8 Q. Carol, I understand that there was a funeral for
9 Charles after the incident. Correct?

10 A. Yes.

11 Q. And that was at Guenther?

12 A. Yes.

13 Q. How much did that cost?

14 A. Boy, I would have to look back at records. I
15 would say around twelve thousand.

16 Q. Did the VA or anyone else help contribute to the
17 cost of the funeral?

18 A. No.

19 Q. Who paid for it? Is it something that you paid
20 for?

21 A. Well, actually, it came out of our joint account.

22 Q. And did that cost include burial arrangements?

23 A. Yes.

1 Q. Were there any other expenses relative to the
2 funeral or burial?

3 A. Well, there was his daughter and an aunt, Susan.
4 The little get-together at Moonwinks Restaurant,
5 which I have no idea how much it cost because
6 they wouldn't let me pay anything.

7 Q. Was that after the service?

8 A. Yes.

9 Q. Was there a wake?

10 A. Yes.

11 Q. Was there any sort of benefit or fundraiser held
12 to help pay those costs?

13 A. No.

14 MS. WANEMAKER: Do you want me to hand it back to you
15 while I go through my notes and fill in some
16 blanks here?

17 MS. MASTRIANO: Yes.

18

19 RE-EXAMINATION BY MS. MASTRIANO:

20

21 Q. All right. I have one more laptop question.

22 You said on your Compaq laptop you recycled
23 the battery for it; is that correct?

1 A. Yes.

2 Q. Do you remember where it was recycled?

3 A. I do not. There were so many locations around
4 the area that were collecting those, you know.

5 Q. Did you recycle it yourself?

6 A. Yes. Well, took it to the recycle area, the
7 recycle place, wherever I went. I do not recall
8 now.

9 Q. Do you know if it's in your same hometown?

10 A. Well, no, near me. I live in Ceres. This is in
11 Olean where I recycled.

12 Q. In terms of I think -- correct me because I can't
13 remember what time you said. You went to bed
14 that night at what time?

15 A. About nine-thirty.

16 Q. And my understanding is you both sleep in the
17 same bed, right?

18 A. Yes.

19 Q. Which side of the bed do you sleep -- does he
20 sleep closer to the door?

21 A. Yes. Right by the door.

22 Q. And after you went to bed at nine-thirty, when's
23 the next time you woke up?

1 A. Not until the alarm went off, smoke alarm,
2 four-twenty approximately the next morning.

3 Q. So when you woke up and you -- you said you threw
4 the covers off; is that correct?

5 A. Yeah. I threw my covers on my side and it woke
6 him up, and I told him that I smell smoke. I
7 thought there was a fire, that, you know, he
8 should try to get into his chair, which is
9 directly beside the bed, and I exited the room to
10 see what was going on or where the smell was
11 coming from.

12 Q. So you threw off the covers. Did he throw off
13 the covers as well?

14 A. Yeah.

15 Q. Okay. Because I thought earlier you testified
16 that you went to turn off the fire alarm because
17 you didn't want to wake him up; is that correct?

18 A. No. He was already aware.

19 Q. And how was he aware?

20 A. Because I told him.

21 Q. Okay. And that -- I'm sorry. Go ahead.

22 A. I woke him by throwing back the covers and he's
23 suddenly sitting on the bed. He didn't know what

1 was going on. And I told him, you know, I smell
2 smoke, I think we might have a fire. He kind of
3 panicked and threw his covers off, so I assumed
4 his ass would get right in that chair. Didn't.

5 Q. Then you threw your covers off?

6 A. Yes.

7 Q. And did you have to wake him up or was he already
8 awake?

9 A. He was awake.

10 Q. And then you said try and get into your chair,
11 there's a fire?

12 A. Pardon me? Try that again.

13 Q. Then you said try and get in your chair, there's
14 a fire?

15 A. Yes. Well, I thought there was a fire, get in
16 the chair.

17 Q. Okay. And could he get into that chair by
18 himself?

19 A. He could. Had every day.

20 Q. And then I think what you testified to was he had
21 a blank stare on his face; is that correct?

22 A. When I came back to the room, yes, he was -- a
23 blank stare, emotionless, no speech, just looking

1 at me.

2 Q. When he first woke up, did he say anything to you
3 then?

4 A. Well, when I told him I thought there was a fire
5 because there was a smoke, he just yelled out,
6 fire? Like a big question, you know. I said
7 yes, you need to get in your chair.

8 Q. When you went back into the room after you went
9 to check on other things in the house, I think
10 you said he never spoke again, right?

11 A. Never spoke again.

12 Q. And when he came back into the room -- when you
13 left the room, where was he? He was on the bed?

14 A. He was still alive on -- in the bed when I left
15 the room.

16 Q. Were the covers on or off him?

17 A. Off.

18 Q. Did you see him getting up or no?

19 A. No. I was in a hurry to see if it was something
20 I could put a halt to.

21 Q. Okay. So before you left the room, he was laying
22 on the bed still when you left the room, right?

23 A. Yes.

1 Q. And then when you came back into the room, after
2 you checked on things in the house, when you came
3 back into the room, he was on the floor?

4 A. Yes.

5 Q. Where was his wheelchair?

6 A. Still by the bed.

7 Q. Had it moved?

8 A. Not to any significant degree that I could see.

9 Q. Was there a brake on that chair?

10 A. Yes.

11 Q. And where was he lying in relation to the chair?

12 A. In front of it.

13 Q. How was the chair positioned up against the bed?

14 You said it was right in the middle of the bed?

15 A. Yeah. Just going halfway up the side of the bed
16 and sitting sideways so that he could normally
17 stand and pivot. Hang on with his right arm and
18 pivot himself into the chair, the seated
19 position.

20 Q. So the wheelchair was perpendicular to the bed;
21 is that correct?

22 A. Yes.

23 Q. So when you came back into the room, he was in

1 front of that chair. Is that what you're saying?

2 A. Yes. He had I think slid off onto the floor from
3 the bed instead of standing on his legs maybe. I
4 don't know why. On his butt on the floor.

5 Q. Let me ask you this question. If Charles had to
6 go to the bathroom in the night or something like
7 that, could he get up on his own or would you
8 have to help him?

9 A. He had usually tried, but usually I would feel
10 the bed moving and hear noise and would get up
11 and help him.

12 Q. And how did he generally get around the house?
13 Was he always using a wheelchair, or did he have
14 a walker or something else?

15 A. No. We gave up on the walker because he had a
16 tendency to -- the one leg kicked out. Kept
17 messing up his walking ability with the walker,
18 so that's another reason why he ended up in the
19 chair.

20 Q. So I know he originally had said the word fire
21 like a question mark you said, and then he didn't
22 say anything else. Now, could you see -- you
23 said it was a blank stare on his face?

1 A. Yes.

2 Q. Do you know if he knew what was going on?

3 A. Well, when I left the room, I told him I was
4 pretty sure there was a fire or there wouldn't
5 have been smoke. So I assumed he would -- was in
6 a panic and saying the word fire? Like what, a
7 fire? You know, that he was aware.

8 Q. Right. I remember hearing you say that he said
9 the word fire, but when you came back in the room
10 -- because he has dementia, right?

11 A. Yes.

12 Q. When you came back in the room and he was on the
13 floor, at that time do you think he knew what was
14 happening?

15 A. I think he did, yes.

16 Q. And why did you think that?

17 A. I don't know what made me think any different.
18 I'm sure he was smelling more smoke at that point
19 himself, you know.

20 Q. So are you assuming, but you don't know?

21 A. Couldn't be sure, you know, what his awareness
22 was at that moment.

23 Q. Had he ever fumbled before when he got out of

1 bed?

2 A. Yes. Not often, but usually it would be because
3 he was getting up in the dark.

4 Q. That's what I was going to ask. I was going to
5 ask if he was able to get himself up -- or, I
6 think I asked you that, and you said no. You
7 typically had to help him get up or --

8 A. Well, generally, I did it, you know, to prevent a
9 fall when he did get up on his own.

10 Q. When you saw him on the ground, was he like in a
11 crouching position or in a laying position?

12 A. He was flat on his butt, like he had slid off the
13 edge of the bed perhaps, and his legs just slid
14 right out in front and his body was --

15 Q. So you hadn't heard him fall then, correct?

16 A. No. Had no idea. What I did hear fall, what I
17 found out later that I thought was him failing,
18 turns out it was my ceiling fan in my kitchen
19 over my table that fell onto the table.

20 Q. When you went back into the room, you were
21 telling him -- you said there's a fire, we have
22 to go or something like that? What did you say
23 to him when you went back in the room, is a

1 better question?

2 A. I don't remember word for word, but I tried to
3 lift and I couldn't lift. I said you need to
4 help me. As I said, he was just not saying
5 anything, not moving, not turning his arms or his
6 legs or anything. I don't know if he was in
7 shock or what was going on with him. It might
8 have overwhelmed him perhaps. I don't know.

9 Q. That's what I was going to ask. Do you know if
10 he understood you?

11 A. Well, he understood the fire when I said it.

12 Q. Right. But when you went back in the room, was
13 there any indication that he understood you, what
14 you were saying?

15 A. No. There was no response. I have no way of
16 knowing.

17 Q. I heard counsel asking about Red Cross and stuff
18 like that. Did you ever have a GoFundMe account
19 set up for you?

20 A. No.

21 Q. When you started to travel with Charles, would
22 you research those trips online?

23 A. Oh, yes.

1 Q. Like the Atlantic City trip?

2 A. Yes. I think we went there a total of three
3 times actually.

4 Q. So earlier you brought up badgering and I think I
5 know in what context.

6 A. I brought up what?

7 Q. You brought up badgering.

8 A. Yeah.

9 Q. That you said your son was upset. Was he upset
10 with you or some other guy for badgering you?

11 A. The people there who were investigating the fire
12 in the early stage. I don't even remember what
13 the guy looked like or how tall he was or
14 anything about him. I was just -- I was on E.

15 Q. I understand that completely. Do you remember if
16 he was EMS or fire or what? Do you remember
17 which --

18 A. What?

19 Q. Was he an EMS or a firefighter?

20 A. I think it was part of the insurance company
21 itself.

22 Q. Was it on the same day of the accident?

23 A. No. No. It was a couple days later. On the day

1 of the fire I repeated myself many times to
2 people from, you know, different fire -- I think
3 I had five different fire companies show up. My
4 road was -- yeah. Blinking lights.

5 Q. What did you use your computer for generally?

6 A. Like I said, mostly e-mail at that time and
7 online ordering, things like that. I did use
8 Skype with my one granddaughter in Idaho. Stuff
9 like that.

10 Q. Now, I know that counsel asked you if Charles had
11 any alcohol in his system at the time of the
12 accident. I think you said no?

13 A. No.

14 Q. Was he taking any type of sleeping medication?

15 A. No.

16 Q. Was he taking any drugs that a side effect, that
17 you know of, is being sleepy?

18 A. No. The only medication was pretty much his
19 blood pressure medication, and even that wasn't a
20 high dose.

21 Q. I wasn't sure if he was getting any treatment for
22 the dementia. No?

23 A. He was pill resistant.

1 Q. Ms. Marcellin, at the time that he fell, do you
2 know if he had his hearing aids in?

3 MR. SCHWARZ: She wants to know if he had his hearing
4 aids in, which you answered, but you can answer
5 again.

6 THE WITNESS: Not while he's in bed. Always took
7 those out at night. I would say ninety-five
8 percent of the people do because they come out
9 and you lose them in the bedding.

10 BY MS. MASTRIANO:

11 Q. But my question was, when you found him on the
12 floor, did he have --

13 A. No. No.

14 Q. No, he didn't have his --

15 A. He didn't have time to get them back, no.

16 Q. So he wasn't wearing his hearing aids, correct?

17 I'm sorry. You have to say yes for the
18 record. Is that correct?

19 A. That's correct.

20 MS. MASTRIANO: Okay. Jaclyn, if you would like to
21 go. I'm just going to organize my notes and see
22 if I have anything else.

23 MS. WANEMAKER: Yes. Thank you. I do have a couple

1 more.

2

3 RE-EXAMINATION BY MS. WANEMAKER:

4

5 Q. Ms. Marcellin, when you left the bedroom after
6 hearing the smoke alarm, did you turn on any
7 lights in the house?

8 A. Believe it or not, I didn't. But I do that a lot
9 in my house, even still. I get up and walk
10 around in the dark, you know. But I have enough
11 windows with lighting coming in and the moon,
12 what have you, it doesn't bother me somehow.

13 Q. You had mentioned using Skype to communicate with
14 your granddaughter in Idaho. Did you have a
15 separate camera or video equipment for that, or
16 was that something built into the computer
17 itself? How did that work?

18 A. I think that was a separate piece of equipment
19 that worked with my computer.

20 Q. And where did you do the Skype? Was that in the
21 office from that same desk?

22 A. Yes.

23 Q. And would that piece of equipment have been there

1 on the date of the incident?

2 A. No. I think that had gone away. She wasn't
3 doing that anymore, no more Skyping. I don't
4 know why. It just did.

5 Q. What did you do with the camera?

6 A. It might have been stored in that drawer on the
7 side of the armoire there.

8 Q. So you kept it somewhere? You didn't throw it
9 out?

10 A. I'm sure I kept it for a while and just forgot
11 all about it.

12 Q. Do you remember when you last used it before the
13 fire?

14 A. Oh, golly. It was probably -- five years I'd
15 say.

16 Q. Did you Skype with anyone else besides her?

17 A. Not that I recall. Everybody was living,
18 family-wise, still pretty close to home, pretty
19 much in the area.

20 Q. And then taking you back to Charles's medical,
21 from the records it looked like there was a prior
22 head injury where he was in a coma for a couple
23 of days after a car accident. Do you -- is that

1 something for Jessica?

2 A. Well, perhaps. But it's even before her time
3 because I think it was shortly after he got out
4 of high school, from what I had learned, that he
5 had been in a car accident with a friend of his
6 from school.

7 Q. So that was back a long time ago?

8 A. Oh, way back. Way back.

9 Q. Do you know if he had any head injuries after
10 that?

11 A. I can't think of any.

12 Q. I have one more exhibit that I want to show you.
13 It's marked as Exhibit 1 for today, and this is
14 the narrative report from the investigator. Are
15 you able to see that? I can move it around.

16 A. Yeah. Brian Hemphill, yeah.

17 Q. This is a two-page document. It's Bates stamped
18 HP00409-410. If you want, I can give you a
19 minute to read through the whole thing. I was
20 going to ask you about some specific paragraphs.

21 MR. SCHWARZ: Why don't we just look at the
22 paragraphs you want to ask about and if we need
23 to, we can scroll back.

1 BY MS. WANEMAKER:

2 Q. I'm going to direct your attention to the last
3 paragraph on page two. If you want to review
4 that.

5 My understanding is that this statement was
6 given to Mr. Luckey at the emergency room of
7 Olean General Hospital the day of the incident,
8 per the paragraph a little bit above.

9 MR. SCHWARZ: Object to the form, because I don't
10 know if it's a statement. It says an interview
11 and it's not depicted as something that he took
12 verbatim. So I will just object to the form of
13 the question.

14 MS. WANEMAKER: Sure.

15 BY MS. WANEMAKER:

16 Q. Ms. Marcellin, do you remember speaking with Mr.
17 Luckey at Olean General that day?

18 A. I spoke with a couple of different people
19 involved in the fire department stuff at the
20 hospital. I did not know in particular who is
21 Mr. Luckey or what he asked.

22 Q. Did those folks ask you questions and you gave
23 them answers?

1 A. Yes.

2 Q. Did you tell them what happened honestly and
3 accurately?

4 A. To the best of my ability.

5 Q. As you read through that last paragraph, is there
6 anything in there that you disagree with or you
7 think is inaccurate?

8 A. Oh, that I had tried to put out the fire. No, I
9 did not. I took the fire extinguisher back with
10 me and saw it was too late for me to try to fight
11 a major fire. No, I did not try to put it out.

12 Q. I'm sorry to keep doing this. When you looked
13 into the office, what did you observe?

14 A. I observed the ceiling catching on fire. The
15 back wall behind my armoire was literally melting
16 in front of my eyes. Fire was falling down onto
17 the carpet. There was just no way I was going to
18 go in there.

19 Q. So you did not enter because of what you
20 observed; is that correct?

21 A. No. I couldn't. I would have caught my hair on
22 fire and then I would have been on fire.

23 Q. And then back to Exhibit 1, that last paragraph

1 on page two. We talked about the fire
2 extinguisher. Is there anything else in that
3 paragraph that you think is inaccurate?

4 A. Other than the fact that I drove down Bells Brook
5 Road towards 417, while I actually drove probably
6 close to another half a mile on 417 before my
7 OnStar connected.

8 Q. You tried to connect with the OnStar --

9 A. As I was already down the road I was trying.

10 Q. Did you try before you got to the road?

11 A. Yes. That's what I said. From the time I left
12 the house until I, you know, finally connected.
13 About half a mile away on the -- it connected at
14 Route 417 on the bottom of my road. I didn't get
15 any connection until I got down there.

16 Q. Mrs. Marcellin could not reach her phone now due
17 to the smoke.

18 Do you know what is meant by that statement
19 in this paragraph?

20 A. Yeah. I don't know why they're referring to not
21 being able to reach my phone due to smoke because
22 it had -- the phone itself had disappeared from
23 the location where it had been placed at bedtime.

1 It actually, like I said, ended up on the floor
2 under the dresser.

3 Q. And the other phone, the landline was inside the
4 office, correct?

5 A. Yes.

6 Q. And was there another receiver anywhere in the
7 house for the landline?

8 A. No. That was a portable handset so that I could
9 take that from room to room, the landline phone.

10 Q. Going back to this paragraph on Exhibit 1, about
11 halfway, it says Mr. Hollowell fell to the floor
12 due to his health condition and Mrs. Marcellin
13 was unable to lift a him.

14 That's a typo, and it's okay. Do you know
15 what is meant by fell to the floor due to his
16 health condition?

17 A. Can you repeat that?

18 Q. Do you have any explanation for fell to the floor
19 due to his health condition?

20 A. I don't think I said it was due to his health
21 condition, but may have played a part in that.
22 But I think it mainly was the fact that he swung
23 his legs out of bed and was too close to the edge

1 of the bed and just slid to the floor.

2 Q. And then I'm going to scroll up on this document
3 to the first page of it, and I'll minimize it so
4 you can see where I'm at here. I'm going to ask
5 you to review the fifth paragraph, if you count
6 this little one, this paragraph. And I'll make
7 it bigger. And just let me know when you're
8 finished.

9 MR. SCHWARZ: The one that starts with the master
10 bedroom?

11 MS. WANEMAKER: Yes. Thank you.

12 THE WITNESS: Well, I don't think he was lying --

13 MR. SCHWARZ: Just read it first.

14 BY MS. WANEMAKER:

15 Q. It's that first sentence where Mr. Hollowell was
16 reported found lying crosswise on the bed with
17 only his feet touching the floor.

18 It is my understanding that he was on the
19 floor the last time you saw him. Correct?

20 A. Yes.

21 Q. Do you know if he was able to get back up on the
22 bed after you left, or do you have any
23 explanation for that sentence?

1 A. I don't understand that sentence either. I know
2 if he was on the floor, that he would not have
3 been able to get himself back up.

4 Q. Okay. Thank you for reviewing that.

5 After the day of the fire when you were at
6 Olean General and spoke -- did you say it was Mr.
7 Luckey?

8 A. Yeah, Luckey.

9 Q. Other than any conversations you had there, did
10 you ever speak with any of the authorities who
11 investigated the fire?

12 A. Other than the insurance company and the people
13 from the Weston Mills Fire Department that took
14 me to the hospital, no. No, no other
15 authorities.

16 Q. Did you ever fill out any sort of report or form
17 relative to the incident?

18 A. Not that I recall.

19 Q. Other than potentially giving a statement to
20 Farmers, as we discussed previously, and speaking
21 with the folks at Olean General, did you ever
22 give any statements regarding the incident?

23 A. I don't recall giving any.

1 Q. Did you ever communicate with HP regarding the
2 incident?

3 A. No.

4 Q. Did you have communicate with HP before the
5 incident with respect to the subject laptop?

6 A. No.

7 Q. Did you ever make any complaints or report any
8 issues about the subject laptop to HP?

9 A. No.

10 Q. And you spoke earlier about seeing your primary
11 care physician. Did you see your primary care
12 physician after the incident with respect to
13 follow-up care for smoke inhalation?

14 A. No. Actually, it turned out that I had an
15 appointment with her just by chance that was only
16 a few days after that fire and it was for -- the
17 wellness visit that the Medicare people do.

18 When I went in, of course, they discovered
19 very quickly that I was having problems,
20 emotionally and wasn't caring much about
21 anything. When she found out what had happened,
22 she immediately hooked me up with her girl that
23 works at her facility as a psych counselor, and I

1 worked with her for many months.

2 Q. Was that covered by insurance?

3 A. Other than just the co-pay for it, yes.

4 Q. What was the co-pay?

5 A. I really can't even remember what it was.

6 Q. And you said you treated there for a number of
7 months?

8 A. Yes. Almost a year.

9 Q. Was any medication prescribed?

10 A. No.

11 Q. Any current appointments scheduled with that
12 provider?

13 A. Now you mean?

14 Q. Yes. Like as we sit here today, do you have
15 any --

16 A. Primary care or the psych?

17 Q. Just the psych.

18 A. No.

19 Q. What is the name of that provider?

20 MR. SCHWARZ: I think we provided you with an
21 authorization for that, Jackie, recently.

22 THE WITNESS: Greenawalt.

23 BY MS. WANEMAKER:

1 Q. Greenawalt is the name?

2 A. Yeah.

3 Q. And how often did you treat there?

4 A. It was approximately once a month. It started
5 during COVID virtually, not a person-to-person
6 thing.

7 Then there was a difficulty that I was a
8 little unsure of her because she was good friends
9 with family, distant relatives. I got a little
10 concerned about our discussions perhaps not being
11 kept as private as I would have wanted it to be.
12 That didn't go as well as I had hoped.

13 Q. Just going to run through some names real quick,
14 and let me know if you were acquainted with any
15 of these folks before the incident. Okay?

16 A. Okay.

17 Q. From the Bolivar Fire Department, Chief Brian
18 Hemphill?

19 A. No.

20 Q. Mark Collins?

21 A. No.

22 Q. James Beaton?

23 A. No.

1 Q. And then Anthony Greenwald?

2 A. Is that Greenwald? Okay. I was thinking it was
3 real close to that psych girl's name, but no, not
4 quite the same. No, not familiar with him.

5 Q. And then we talked already about -- his name was
6 Mr. Luckey?

7 A. Yes.

8 Q. Did you ever meet him prior to the incident?

9 A. No. No, I hadn't.

10 Q. And then from Allegany Fire Department, Valeri,
11 Edwards, Aderhold, are you familiar with those
12 persons?

13 A. No.

14 Q. Did your son Alfred Junior come to the hospital
15 on the night of the incident?

16 A. Oh, yes. Both my sons did.

17 Q. Did anybody else from the family come to the
18 hospital that night?

19 A. Well, their wives were with them.

20 MS. WANEMAKER: Maria, do you have anything
21 additional while I take one last cruise through
22 my notes?

23 MS. MASTRIANO: Yes. Just a couple.

1 THE WITNESS: I've got to take a break.

2 MS. WANEMAKER: Sure.

3 (Whereupon, a short recess was then taken.)

4

5 RE-EXAMINATION BY MS. MASTRIANO:

6

7 Q. Ms. Marcellin, how old was the house at the time
8 of the incident?

9 A. What?

10 MR. SCHWARZ: How old was the house?

11 THE WITNESS: How old was the house? Oh, golly.

12 About forty years or five.

13 BY MS. MASTRIANO:

14 Q. Had you ever had problems with faulty wiring in
15 your house?

16 A. No.

17 Q. Had you ever had somebody come check the
18 electricity in your house five years prior to the
19 incident?

20 A. No.

21 Q. When you said that you and Charles would split
22 the bills, right, do you know how much per month
23 he was contributing to the household expenses?

1 A. Well, it was pretty much a fifty/fifty deal.

2 Q. Do you know what his portion of that fifty/fifty
3 was, how much per month?

4 A. Probably about four hundred apiece.

5 Q. And that's per month?

6 A. Yes.

7 Q. And that money came from Social Security; is that
8 right?

9 A. Primarily, yes.

10 Q. Also pension?

11 A. I would say primarily was Social Security.

12 Q. We've got to quickly talk about that night one
13 more time and that will be it for me.

14 When you went into your sewing room, where
15 -- strike that. When you went into the sewing
16 room, was there -- when you stood outside and
17 looked inside the sewing room, was there one area
18 of the room that seemed to have more fire than
19 other parts of the room?

20 A. Oh, yeah. Definitely the armoire, the wall
21 behind it, the computer desk, you know. Took a
22 while to get to the side that was actually used
23 for the sewing area.

1 Q. Prior to the night of the incident, had you ever
2 seen him use a blank stare and be unresponsive?

3 A. No. Not that I can recall.

4 Q. In terms of the 2015 laptop, did you ever
5 complain about the 2000 -- or, give any
6 complaints or type of feedback to anybody at
7 Staples about the 2015 laptop after you purchased
8 it but before the fire?

9 A. No.

10 Q. After the incident, did you ever communicate with
11 anybody from Staples regarding the incident?

12 A. Nope. Not that I recall.

13 Q. Sorry if these were already asked. I have to ask
14 everybody these. Have you ever been convicted of
15 a crime?

16 A. No.

17 Q. Have you ever had a different name, like your
18 married name prior, or is this it?

19 A. No.

20 Q. What was your maiden name?

21 A. Bell.

22 Q. Ms. Marcellin, where were you born?

23 A. When or where?

1 Q. Where.

2 A. New York.

3 MS. MASTRIANO: I believe that's all I've got for
4 you.

5

6 RE-EXAMINATION BY MS. WANEMAKER:

7

8 Q. At the time of the incident, did you have a
9 mortgage on the house?

10 A. No.

11 Q. When you moved into the house initially, did you
12 have a mortgage?

13 A. No.

14 Q. Back to that night, when you went back to the
15 bedroom and you had testified about Charles
16 having a blank stare, did he make any sounds at
17 that time?

18 A. Not at that time. He was totally silent.

19 Q. Were you able to tell if he was breathing?

20 A. No. Probably, basically, because he was seated.
21 If he had been lying down, I would have seen
22 chest rise, whatever, but no.

23 MS. WANEMAKER: Okay. I think that's all I've got

1 for you. Thank you.

2 MS. MASTRIANO: I have one follow-up. Sorry.

3

4 RE-EXAMINATION BY MS. MASTRIANO:

5

6 Q. Ms. Marcellin, I thought you testified previously
7 that he was laying down when you left the room,
8 and when you came back in the room he was on the
9 ground. When was he seated?

10 A. I said I think when he swung his legs around to
11 try to get up is when he slid off the edge of the
12 bed and ended up flat on his butt with his legs
13 out in front of him on the floor.

14 Q. Okay. I got that. But I thought that you said
15 that you didn't have time for him to get up
16 because of the fire. So he was laying down when
17 you left the room, and when you came back he was
18 on the ground. So when did you see his chest
19 going up and down breathing?

20 A. I didn't. I never said I did. I said if he had
21 still been in bed, I would have been able to see
22 if the chest was rising and falling and know if
23 he was breathing.

1 Q. So were you able to observe that?

2 A. No, I was not, because he was seated on the
3 floor.

4 Q. So you're saying when you came back in the room,
5 he wasn't laying on the floor, he was seated on
6 the floor?

7 A. Yeah. He was sitting flat on his butt on the
8 floor.

9 Q. Okay.

10 A. Leaning against the bed.

11 Q. I think the confusion was I think that you said
12 he was laying on the floor when you came back in
13 the room. Was he laying or was he sitting?

14 A. No, I didn't. I said he was sitting on the
15 floor.

16 MS. MASTRIANO: Okay. Well, good. And that's
17 clarification, sitting on the floor.

18 Thank you. That's all I've got.

19

20 * * * * *

21

22

23


1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF ERIE)

4
5 I, Angela L. Muto, a Notary Public in and
6 for the State of New York, County of Erie, DO
7 HEREBY CERTIFY that the testimony of CAROL
8 MARCELLIN was taken down by me in a verbatim
9 manner by means of Machine Shorthand, on July 7,
10 2023. That the testimony was then reduced into
11 writing under my direction. That the testimony
12 was taken to be used in the above-entitled
13 action. That the said deponent, before
14 examination, was duly sworn by me to testify to
15 the truth, the whole truth and nothing but the
16 truth, relative to said action.

17 I further CERTIFY that the above-described
18 transcript constitutes a true and accurate and
19 complete transcript of the testimony.

20
21 
22 ANGELA L. MUTO,
23 Notary Public.

Carol Marcellin

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